



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2005 REGULAR SESSION

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SENATE BILL NO. 86

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MONDAY, FEBRUARY 14, 2005

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The following bill was reported to the House from the Senate and ordered to be printed.

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TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adler

AN ACT relating to workers' compensation self-insured groups and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. SUBTITLE 50 OF KRS CHAPTER 304 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*The purpose of this subtitle is to establish minimum financial standards for workers' compensation self-insured groups to ensure that self-insured groups are providing adequate coverage for member employers' risks and liabilities under KRS Chapter 342 for injured employees of the member employers.*

SECTION 2. A NEW SECTION OF SUBTITLE 50 OF CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*(1) The commissioner may authorize twenty (20) or more employers with common interests or membership in a bona fide trade association, or two (2) or more governmental entities to enter into agreements to pool their liabilities under KRS Chapter 342 for the purpose of qualifying as a workers' compensation self-insured group under this subtitle and Section 45 of this Act.*

*(2) The commissioner shall promulgate administrative regulations as necessary to govern admission, certification, and regulation of workers' compensation self-insured groups as authorized by this section and Section 45 of this Act. The commissioner shall take any and all action necessary to effectuate the provisions of this subtitle. The commissioner shall be responsible for maintaining records obtained or prepared in association with this oversight.*

*(3) The Governor may assign the regulatory authority under this subtitle to another board or agency pursuant to KRS 12.028.*

*(4) Except as specifically provided in this subtitle, no other provision of this chapter shall apply to a workers' compensation self-insured group.*

SECTION 3. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS

1   CREATED TO READ AS FOLLOWS:

2   *As used in this subtitle, unless the context requires otherwise:*

- 3   *(1) "Adjuster" means any person required to be licensed as an adjuster under*  
4       *Subtitle 9 of this chapter, who for a fee or compensation investigates or settles*  
5       *claims arising under contracts issued by a workers' compensation self-insured*  
6       *group on behalf of either the group member or the group.*
- 7   *(2) "Administrator" means an individual or legal entity engaged by a self-insured*  
8       *group's board of trustees to carry out the policies established by the self-insured*  
9       *group's board of trustees and provide day-to-day management of the self-insured*  
10      *group.*
- 11   *(3) "Agent" means an individual or business entity required to be licensed by the*  
12      *Department of Insurance under Subtitle 9 of this chapter, to sell or solicit*  
13      *applications for insurance or to negotiate insurance contracts.*
- 14   *(4) "Aggregate excess insurance" means insurance which provides that the excess*  
15      *insurer pays on behalf of or reimburses a self-insurer for its payment of benefits*  
16      *on claims incurred during a policy period in excess of the retention amount to the*  
17      *excess insurer's limit of liability.*
- 18   *(5) "Assessment" means a levy made on members of the group to fund deficiencies.*
- 19   *(6) "Bona fide trade association" means an association of employers created for a*  
20      *noninsurance trade purpose and which has been operating in the Commonwealth*  
21      *for at least two (2) years prior to its sponsorship of a self-insured group.*
- 22   *(7) "Certificate of filing" means the certificate issued to a workers' compensation*  
23      *self-insured group to indicate that it has complied with the provisions of this*  
24      *subtitle which are prerequisites to its operation.*
- 25   *(8) "Commissioner" means the commissioner of the Kentucky Department of*  
26      *Insurance.*
- 27   *(9) "Common interests" means employers that are engaged in similar activities,*

- 1 share common standard industrial classification codes and common risk factors.
- 2 (10) "Consultant" means an individual, required to be licensed under Subtitle 9 of  
3 this chapter, who as an independent contractor in relation to his client, for fee or  
4 compensation other than from a workers' compensation self-insured group, in  
5 any manner advises or purports to advise, any person actually or prospectively a  
6 member of such a group, concerning coverage, advisability, rights, or interests  
7 under the contract or relative to the retention, exchange, surrender, or exercise of  
8 rights thereunder.
- 9 (11) "Coverage form" means coverage contract forms, endorsements, applications,  
10 indemnity agreements, clauses, riders, and all other documents regarding  
11 coverage.
- 12 (12) "Deficiency" means that the self-insured group's assets are insufficient to enable  
13 the group to discharge its legal liabilities, other obligations, and maintain the  
14 reserves required under this subtitle, or that the group has a negative members'  
15 fund balance.
- 16 (13) "Deficit" means the amount of any deficiency in the self-insured group or group  
17 self-insurance fund.
- 18 (14) "Dividends" means disbursements from surplus funds to group members in  
19 accordance with a plan filed with, and approved by, the commissioner.
- 20 (15) "Earned premium" means the prorated portion of the full, actual premium  
21 charged to the group members that is applicable to the group's accounting period  
22 or fiscal year.
- 23 (16) "Employee" means those persons covered under the provisions of KRS 342.640  
24 and those persons voluntarily covered under KRS 342.660.
- 25 (17) "Employer" means an employer mandatorily subject to, and required to comply  
26 with the provisions of KRS Chapter 342, and those voluntarily covering excluded  
27 employees pursuant to KRS 342.660.

- 1 (18) "Fiscal agent" means a person, or legal entity, other than a service organization  
 2 or employees or agents of a service organization, designated by the trustees to  
 3 receive, invest and disburse the self-insured group's funds.
- 4 (19) "Forms" means coverage contract forms, endorsements, applications, indemnity  
 5 agreements, clauses, riders, articles of association, articles of incorporation, trust  
 6 agreements or bylaws of the proposed group, and all other documents regarding  
 7 coverage and membership.
- 8 (20) "Governmental entities" means cities, counties, urban-county governments,  
 9 charter county governments, consolidated local governments, school districts and  
 10 other political subdivisions of the Commonwealth, and their boards, agencies,  
 11 authorities and commissions.
- 12 (21) "Group members" means employers who have joined a self-insured group.
- 13 (22) "Group self-insurance fund" means the contractual arrangement whereby  
 14 twenty (20) or more employers with common interests or two (2) or more  
 15 governmental entities associate to jointly self-insure their workers' compensation  
 16 liability.
- 17 (23) "Insolvent" or "Insolvency" means the inability of a self-insured group to pay its  
 18 outstanding lawful obligations as they mature in the regular course of business,  
 19 or to hold sufficient assets to prospectively pay all incurred workers'  
 20 compensation benefits when due.
- 21 (24) "Insurance producer" means an individual or business entity required to be  
 22 licensed under Subtitle 9 of this chapter to sell, solicit, or negotiate insurance.  
 23 "Insurance producer" includes agent, consultant, managing general agent,  
 24 surplus lines broker, reinsurance intermediary broker and manager, and, for a  
 25 workers' compensation self-insured group, a third-party administrator.
- 26 (25) "Person" includes, but is not limited to, any individual, partnership, association,  
 27 limited liability company, trust or corporation.

1 (26) "Premium" means the amount of money charged each member of the self-  
 2 insured group to fund the obligations and expenses of the self-insured group.

3 (27) "Qualified actuary" means an associate or fellow of the Casualty Actuarial  
 4 Society.

5 (28) "Rate" means the expected value of the future cost of insurance per exposure  
 6 unit which accounts for the treatment of losses, expenses, and profit prior to any  
 7 application of individual risk variations based on loss or expense considerations,  
 8 but does not include minimum premium.

9 (29) "Self-insured group" means a group self-insurance fund.

10 (30) "Self-insurance year" means the annual period of certification of the self-  
 11 insured group authorized under Sections 2 and 45 of this Act.

12 (31) "Service organization" means a person or entity that provides services to a self-  
 13 insured group and includes claims adjustment, safety engineering, statistical  
 14 compilation, preparation of premium charges, loss and tax reports, or other  
 15 reports required by the commissioner, administration of the self-insured group,  
 16 marketing services, placement of excess insurance, development of member  
 17 payroll audits, administration of investments, or legal assistance.

18 (32) "Specific excess insurance" means an insurance policy which insures the  
 19 amount of a claim from one (1) occurrence involving one (1) or more employees  
 20 or employers in the same occurrence or incident of exposure in excess of a  
 21 specified dollar amount to a stated limit.

22 (33) "Supplementary rating information" means any manual or plan of rates,  
 23 classification, rating schedule, minimum premium, policy fees, rating rules, or  
 24 any similar information needed to determine the applicable rate or premium.  
 25 This shall include underwriting rules, but only to the extent necessary to  
 26 determine the rate or premium that will be applicable to a risk should the self-  
 27 insured group decide to provide coverage. This does not include guidelines that

1 relate to the selection of those risks that are acceptable to a workers'  
 2 compensation self-insured group.

3 (34) "Supporting information" means the experience and judgment of the filer and  
 4 the experience or data of other insurers or organizations relied on by the filer, the  
 5 interpretation of any other data relied on by the filer, descriptions of methods  
 6 used in making the rates, and any other information required by the  
 7 commissioner.

8 (35) "Surplus funds" means the excess of the self-insured group's assets over its  
 9 liabilities.

10 (36) "Trustees" means persons elected by the group members or appointed by the  
 11 board of directors of the sponsoring trade association or association of  
 12 governmental entities to oversee the administration of the self-insured group.

13 SECTION 4. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
 14 CREATED TO READ AS FOLLOWS:

15 The provisions of this subtitle apply to a group or association of employers subject to  
 16 the provisions of KRS Chapter 342, which may include employers voluntarily  
 17 complying with the provisions of KRS Chapter 342, who join together to self-insure  
 18 against workers' compensation risks. Any workers' compensation self-insured group  
 19 operating under a certificate of filing as of the effective date of this Act shall have one  
 20 (1) year from that date to comply with the provisions of this subtitle, to the extent that  
 21 these provisions differ from prior requirements in KRS Chapter 342 and the  
 22 administrative regulations promulgated thereunder. Extensions of time may be granted  
 23 for good cause shown at the discretion of the commissioner.

24 SECTION 5. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
 25 CREATED TO READ AS FOLLOWS:

26 (1) Except for an activity arising in the creation of a workers' compensation self-  
 27 insured group, a person or entity shall not issue a binder or certificate of

1 insurance for workers' compensation coverage unless the workers' compensation  
 2 self-insured group has been certified to do so by the commissioner. A certification  
 3 issued by the commissioner shall remain in effect until revoked or modified by  
 4 the commissioner in accordance with Section 28 of this Act.

5 (2) All certificates of filing issued by the commissioner of the Department of  
 6 Workers' Claims prior to the effective date of this Act, shall remain in full force  
 7 and effect, unless revoked or suspended by the commissioner in accordance with  
 8 Section 28 of this Act. The commissioner shall issue replacement certificates of  
 9 filing within thirty (30) days of the effective date of this Act.

10 SECTION 6. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
 11 CREATED TO READ AS FOLLOWS:

12 (1) A proposed workers' compensation self-insured group seeking initial certification  
 13 shall file with the commissioner an application for a certificate of filing  
 14 accompanied by a nonrefundable filing fee of six hundred dollars (\$600). An  
 15 application for initial certification as a workers' compensation self-insured group  
 16 shall be filed on a form approved by the commissioner by:

17 (a) A group of twenty (20) or more employers having common interests or  
 18 membership in a bona fide trade association. Any group member having  
 19 more than fifty percent (50%) common ownership shall constitute one (1)  
 20 group member; or

21 (b) Two (2) or more governmental entities.

22 (2) Each initial application shall set forth or be accompanied by:

23 (a) The self-insured group's name, location of its principal office, date of  
 24 organization, name and address of each group member, if known at the  
 25 time of application, or if unknown, a description of the members to be  
 26 solicited for membership, and identification of its fiscal year;

27 (b) A copy of the articles of association, articles of incorporation, trust



agreement or bylaws of the proposed self-insured group, including a description of the time and method by which premiums shall be determined, assessed and collected during regular operations and in the event of insolvency of the self-insured group;

(c) A copy of any agreements with an administrator, service organization, and fiscal agent including third-party administrators and consultants;

(d) A copy of the agreement between the self-insured group and each member jointly and severally binding the group and each member of the group to comply with the provisions of this subtitle and the decisions of the trustees relating to the operation of the self-insured group;

(e) A description of the group members' common interests or a description of the bona fide trade association including date of organization, articles of incorporation, and a history of the association's activities;

(f) The managed care and utilization review plans, if any, established under KRS Chapter 342 for the self-insured group;

(g) A copy of each instrument by which the self-insured group or its agent or consultant has made a commitment to pay for a past or future good or service;

(h) Identification by name, address, and term of the initial board of trustees, administrator, and service organization together with an attested statement that a pecuniary or personal conflict does not exist between the official duties of the trustees, administrators and service organizations and the interests of the members;

(i) The name of the custodian and the address where the self-insured group's books and records will be kept;

(j) Specimen of the proposed policy and certificate of insurance for the specific and aggregate excess coverage, clearly stating any deductible or retention

1           amount;

2           (k) Copies of security deposits and fidelity bonds required under this subtitle;

3           (l) A proposed schedule of projected annual premium rates and any factor or  
 4           plan by which rates may be modified. Experience modification factors shall  
 5           be calculated according to the rules of the advisory organization designated  
 6           by the commissioner in accordance with Subtitle 13 of this chapter;

7           (m) Financial statements for initial group members audited by a certified public  
 8           accountant, and signed by an owner or officer of each member,  
 9           demonstrating a combined net worth of not less than ten million dollars  
 10           (\$10,000,000) for the group, except for governmental entities, and the  
 11           financial condition of each member;

12           (n) A feasibility study prepared by a qualified actuary demonstrating the overall  
 13           adequacy and soundness of the proposed plan of operation for the self-  
 14           insured group; and

15           (o) A three (3) year financial projection including income statements, balance  
 16           sheets, statements of cash flow and all material assumptions relating to the  
 17           financial projection for the self-insured group.

18           (3) (a) Except as provided in paragraph (b) of this subsection, the premium of one  
 19           (1) group member shall not exceed twenty percent (20%) of the estimated  
 20           total premium for the workers' compensation self-insured group.

21           (b) If the group consists of two (2) or more governmental entities, the premium  
 22           of one (1) group member shall not exceed sixty percent (60%) of the  
 23           estimated total premium for the self-insured group.

24           (4) The first year's premium for the initial certification of the self-insured group  
 25           shall not be less than one million dollars (\$1,000,000). Verification shall be  
 26           presented that twenty-five percent (25%) of the initial estimated premium has  
 27           been paid and deposited with the self-insured group's fiscal agent.

1 (5) The initial application shall be filed a minimum of ninety (90) days prior to the  
 2 proposed inception date of the self-insured group.

3 SECTION 7. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
 4 CREATED TO READ AS FOLLOWS:

5 Certification as a workers' compensation self-insured group shall be granted only if  
 6 the commissioner finds that the applicant has complied with the provisions of this  
 7 subtitle, paid the application fee, and met the following conditions:

8 (1) All persons responsible for the conduct of the affairs of the workers'  
 9 compensation self-insured group are financially stable, and experienced in the  
 10 administration of a workers' compensation self-insured group;

11 (2) The workers' compensation self-insured group is financially responsible and has  
 12 demonstrated the ability to meet all of its obligations to participants and  
 13 prospective participants and injured workers as required in KRS Chapter 342. In  
 14 making this determination, the commissioner may consider:

15 (a) The adequacy of working capital;

16 (b) The applicant's compliance with all requirements of this subtitle, including,  
 17 but not limited to:

18 1. The adequacy of the funding mechanisms;

19 2. The existence and adequacy of appropriate excess insurance;

20 3. The participating members' financial strength;

21 4. The stability of the membership;

22 5. The risks of the industry;

23 6. The experience of management and all persons responsible for the  
 24 conduct of the affairs of the workers' compensation self-insured  
 25 group; and

26 7. An initial and ongoing minimum surplus funds requirement of not  
 27 less than one million dollars (\$1,000,000), except for a workers'

compensation self insured group currently operating under a remedial  
action plan approved by the commissioner.

SECTION 8. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
CREATED TO READ AS FOLLOWS:

(1) A certificate of filing shall remain in effect until terminated at the request of the  
self-insured group or suspended or revoked by the commissioner in accordance  
with the provisions of this subtitle.

(2) The commissioner shall not grant the request of a workers' compensation self-  
insured group to terminate its certificate of filing unless the group has filed with  
the commissioner a statement describing arrangements that have been made to  
pay obligations of the group, including both known claims and expenses and  
incurred but not reported claims and expenses.

(3) Subject to the approval of the commissioner, a workers' compensation self-  
insured group may merge with another workers' compensation self-insured  
group. As a result of any merger, the resulting workers' compensation self-  
insured group shall assume in full all obligations of the constituent groups.

SECTION 9. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
CREATED TO READ AS FOLLOWS:

(1) To obtain and maintain a certificate of filing, a workers' compensation self-  
insured group shall have sufficient financial strength to pay all benefits for  
compensation required by KRS Chapter 342 for risks covered by the group,  
including known claims and expenses and incurred but not reported claims and  
expenses.

(2) (a) The trustees and administrators shall provide a fidelity bond to the  
commissioner in the amount of not less than three hundred thousand  
dollars (\$300,000), which may be subject to a deductible not exceeding ten  
thousand dollars (\$10,000), for each trustee, each administrator and the

administrator's employees.

(b) The fiscal agent shall provide a fidelity bond to the trustees of not less than fifty percent (50%) or one million dollars (\$1,000,000), whichever is lower, of the funds to be handled by the fiscal agent. This requirement shall be waived if the fiscal agent is a national bank.

(c) The service organization shall provide a fidelity bond to the trustees of not less than two (2) times the amount of the revolving fund.

(d) In lieu of the bonds required under paragraphs (a), (b) and (c) of this subsection, the trustees may secure a fidelity blanket bond in an amount not less than fifty percent (50%) of the self-insured group's premium or two million dollars (\$2,000,000), whichever is lower. The fidelity blanket bond shall include the trustees, the administrator, the service organization, personnel of the service organization and the fiscal agent, unless the fiscal agent is a national bank.

SECTION 10. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The group shall provide security deposits to the commissioner on a form prescribed by the commissioner in an amount not less than two hundred fifty thousand dollars (\$250,000), ten percent (10%) of the annual premium or ten percent (10%) of the reserve requirement as established in the most recent certified statement of financial condition on file with the commissioner, whichever is greater.

(2) The trustees may file cash, cash equivalents, or United States Treasuries as security deposit or a bank letter of credit on a form, or forms prescribed by the commissioner, in satisfaction of the security deposit requirement. Notwithstanding any other provision of law to the contrary, the deposit required under this section shall be under trust agreements to which depositories, a self-

insured group, and the commissioner are parties. The commissioner may at any time inventory assets on deposit for any self-insured group. Assets shall not be removed or deposited in or from the bank or trust company in which the assets are deposited, except upon a written order, approved by the commissioner, of at least two (2) officers authorized for such purpose by the workers' compensation group self-insurance fund's board of directors or other governing body, except that assets may be deposited or removed under the direction and upon the order of a court of competent jurisdiction, and in the presence of the commissioner. Deposit assets shall be valued at market.

(3) (a) Unless a fund fails to cure a deficiency, is insolvent, subject to a delinquency proceeding, or is in default as to taxes or other charges due under state law, a group self-insurance fund shall be entitled:

1. To collect and receive interest, dividends and payments accruing upon assets held on deposit for its account.
2. From time to time, to exchange and substitute for any such assets, other assets eligible for deposits.

(b) If the group self-insurance fund fails to cure a deficiency when required, is insolvent, subject to delinquency proceedings, or is in default as to taxes or other charges due to the Commonwealth under law, the commissioner shall collect such interest, dividends and payments and add them to the group self-insurance fund's deposit.

(4) (a) Any required deposit shall be released, in addition to circumstances already provided for in the following instances only:

- 1 Upon extinguishment of substantially all liabilities of the group self-insurance fund for the security for which the deposit is held;
2. If the deposit is no longer required under this subtitle; or
3. Upon proper order of a court of competent jurisdiction, the deposit

1 shall be released to the receiver, conservator, rehabilitator or  
 2 liquidator of the group self-insurance fund.

3 (b) No release of a deposit shall be made except on application to and written  
 4 order of the commissioner made upon proof satisfactory to the  
 5 commissioner of the existence of one of the grounds required in paragraph  
 6 (a) of this subsection. The commissioner shall not have any personal  
 7 liability for any such release of any deposit or part thereof so ordered by the  
 8 commissioner in good faith.

9 (5) The commissioner shall publish a list of banks or trust companies for the security  
 10 deposits or letter of credit as proposed by the group self-insurance fund.

11 SECTION 11. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
 12 CREATED TO READ AS FOLLOWS:

13 (1) A workers' compensation self-insured group shall establish plans for premium  
 14 payment, determination and collection of assessments, and for declaration and  
 15 payment of dividends or other disbursements which shall be filed for prior  
 16 approval with the commissioner. Any change in the plans for premium payment,  
 17 assessments, or dividends shall be filed for prior approval with the commissioner.  
 18 Approval of plans for assessments and dividends does not constitute approval of  
 19 any particular assessment or dividend by the commissioner.

20 (2) Prior to the inception of each group member's self-insurance year, the trustees  
 21 shall collect from that member at least twenty-five percent (25%) of the estimated  
 22 premium for the ensuing year, except that in the case of a self-insured group  
 23 formed by governmental entities twenty-five percent (25%) of the estimated  
 24 premium for the ensuing year shall be collected no later than thirty (30) days  
 25 after the beginning of the self-insured group's self-insurance year. The balance  
 26 of the estimated premium shall be collected in either quarterly or monthly  
 27 installments as set forth in the enabling documents described in subsection (2)(b)

1 of Section 6 or subsection (2)(b) of Section 12 of this Act. Each group member's  
2 payroll shall be audited annually and an adjustment to premium shall be made  
3 accordingly.

4 (3) A disbursement from a workers' compensation self-insured group fund shall be  
5 for a purpose related to the self-insured group. A dividend shall not be approved  
6 or paid until at least thirty-six (36) months after the expiration of the self-  
7 insurance year and shall be paid from surplus funds not required for payment of  
8 claims or other liabilities. The dividends shall be paid or credited to members  
9 according to the reasonable classifications the trustees may establish. A dividend  
10 shall not be paid which unfairly discriminates between members of the same  
11 classifications. A dividend plan shall specify whether past group members are  
12 eligible for the dividend. Payment of a dividend under a dividend plan shall not  
13 be made unless the self-insured group has notified the commissioner of its intent  
14 to make a dividend payment at least thirty (30) days prior to the payment, and the  
15 commissioner has not disapproved the payment within that time.

16 (4) The formula to be used for collection of assessments shall be determined by the  
17 trustees and approved by the commissioner. Assessments shall be fair and  
18 equitable and shall not unfairly discriminate between members of the same  
19 classification.

20 (5) A trustee, fiscal agent or service organization shall not utilize an asset of the self-  
21 insured group for a purpose unrelated to workers' compensation. The trustees  
22 shall maintain cash or cash equivalent accounts as may be prudently necessary to  
23 pay expenses without having to liquidate long-term investments.

24 (6) The trustees may invest funds in:

25 (a) United States Government bonds, United States Treasury notes, Treasury  
26 bills, or other direct obligations guaranteed by the full faith and credit of  
27 the United States Government and its agencies;



1 (b) Tax exempt obligations issued by the Commonwealth of Kentucky or its  
 2 agencies with a minimum rating of "A" by Standard & Poor;

3 (c) Obligations issued by a county, district, municipality or other legal  
 4 authority within the commonwealth with a minimum rating of "AA" by  
 5 Standard & Poor;

6 (d) Investment share accounts in a savings and loan association in the  
 7 commonwealth whose deposits are insured by a federal agency;

8 (e) Certificates of deposit if issued by a duly chartered commercial bank in the  
 9 Commonwealth;

10 (f) Individual equity securities actively traded on the New York or NASDAQ  
 11 Stock Exchanges with no individual equity holding comprising greater than  
 12 ten percent (10%) of the equity portion of the portfolio at the time of  
 13 purchase;

14 1. An investment in an individual equity holding shall not represent at  
 15 the time of purchase more than five percent (5%) of the total market  
 16 value of the security.

17 2. Investments in equity securities shall not exceed twenty percent (20%)  
 18 of the total market value of the investment portfolio of the self-insured  
 19 group at the time of purchase.

20 (g) Corporate bonds if:

21 1. The bond is issued, assumed, or guaranteed by a solvent institution  
 22 created or existing under the laws of the United States, or a state,  
 23 province, district, or territory;

24 2. The corporate bond investments do not exceed fifteen percent (15%) of  
 25 the total market value of the investment portfolio at the time of  
 26 purchase; and

27 3. The bond has a minimum rating of "A" by Standard and Poor;

(h) Mutual funds that are registered investment advisors licensed by the Security and Exchange Commission and the Commonwealth to perform investment services. Investments in mutual funds shall not exceed twenty percent (20%) of the total market value of the investment portfolio at the time of purchase.

(7) Of the aggregate investments made by the trustees of the self-insured group under this section:

(a) Not less than seventy-five percent (75%) of the total market value of the entire investment portfolio shall be held in cash, cash equivalents, or securities as described in subsection (5)(a) of this section; and

(b) A minimum of fifteen percent (15%) of the total investment portfolio value shall be maintained in cash or cash equivalent accounts or United States Treasury and Federal Agency Securities with a remaining maturity of one (1) year or less.

(8) The commissioner may permit variation from the requirements of this section for good cause.

SECTION 12. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The information and reports required by this section shall be filed by the self-insured group with the commissioner on an annual basis.

(2) Within one hundred twenty (120) days before the expiration of each self-insurance year, the self-insured group shall file:

(a) Copies of all fidelity bonds, security deposits, and letters of credit;

(b) Any material change in the administration of the group including any change in the organizational documents, change in the administrator, or a change in the service organization or fiscal agent;

(c) An attested statement relating to conflicts of interest and compliance with

Section 21 of this Act; and

(d) Any other information the commissioner may require.

(3) Within ten (10) days before the expiration of each self-insurance year, the self-insured group shall file proof of excess insurance coverage for the ensuing year.

(4) Within one hundred twenty (120) days from the end of the self-insured group's fiscal year, the group shall file the statement of financial condition required by Section 22 of this Act and any other relevant financial information requested by the commissioner. Within forty-five (45) days from the end of each fiscal quarter, the self-insured group shall file a statement of financial condition along with an acknowledgment signed by the board of trustees or its authorized agent indicating that the statement has been presented to the board and any other relevant financial information requested by the commissioner, including a balance sheet, and income and cash flow statement, on a form prescribed by the commissioner.

SECTION 13. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A workers' compensation self-insured group shall notify the commissioner immediately of any material change in the information required to be filed under this subtitle or in the manner of its compliance with KRS Chapter 342.

SECTION 14. A NEW SECTION OF KRS CHAPTER SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An agent of a workers' compensation self-insured group shall be licensed as an agent with casualty line of authority in accordance with Subtitle 9 of this chapter.

(2) Workers' compensation self-insured groups shall not be required to appoint agents.

SECTION 15. A NEW SECTION OF KRS CHAPTER SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner or his or her designee shall have power to examine the financial

condition, affairs, and management of any workers' compensation self-insured group subject to the provisions of this subtitle. He or she shall have free access to all the books, papers, and documents relating to the business of the organization, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of any group, or any person in relation to the workers' compensation self-insured group's affairs, transactions, or conditions relating to workers' compensation. The commissioner shall examine each workers' compensation self-insured group not less frequently than every four (4) years. Information and other data obtained through the examination shall be subject to the provisions of KRS 304.2-230 to 304.2-290 of this chapter. All examination expenses shall be borne by the self-insured group being examined.

SECTION 16. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A workers' compensation self-insured group issued a certificate of filing under this subtitle is deemed to have appointed the Secretary of State as its attorney to receive service of legal process issued against it in Kentucky. This appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as the self-insured group has workers' compensation exposures in this Commonwealth.

SECTION 17. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Each self-insured group shall be operated by a board of trustees. Except for a self-insured group formed by governmental entities, the board of trustees for each self-insured group shall consist of at least two (2) but not more than twenty (20) persons selected in the manner prescribed in the bylaws of the self-insured group or other laws of the Commonwealth.

(2) The board of trustees shall:

(a) Be residents of Kentucky or officers of corporations authorized to do

1 business in Kentucky;

2 (b) Administer the operations of the workers' compensation self-insured group  
 3 ensuring that there is adequate funding to pay compensation required by  
 4 KRS Chapter 342, that all claims are paid promptly and processed to  
 5 conclusion, and that all necessary precautions are taken to safeguard the  
 6 assets of the group;

7 (c) Maintain responsibility for all moneys collected or disbursed from the  
 8 group;

9 (d) Maintain minutes of its meetings and make the minutes available to the  
 10 commissioner and group members;

11 (e) Designate an administrator to carry out the policies established by the board  
 12 of trustees and to provide day-to-day management of the self-insured group;

13 (f) Develop rates and collect premium and assessments; and

14 (g) Invest the self-insured group's funds.

15 (3) The board of trustees shall not:

16 (a) Extend credit to individual group members for payment of premiums or  
 17 assessments, except in accordance with payment plans filed with the  
 18 commissioner;

19 (b) Permit the loan of any moneys to, or borrow any moneys from the self-  
 20 insured group or in the name of the group, except that a workers'  
 21 compensation self-insured group formed by governmental entities may  
 22 borrow moneys in the name of the group; or

23 (c) Have a direct or indirect pecuniary interest in a service organization.

24 (4) (a) The trustees may contract with a service organization, an administrator, or  
 25 a fiscal agent to carry out the administration of the workers' compensation  
 26 self-insured group.

27 (b) A service organization, its employees and agents shall be duly licensed to

1 perform those functions for which a license is required under Kentucky law.

2 (c) A revolving fund of not more than twenty percent (20%) of estimated  
 3 premiums may be established for use by a service organization for the  
 4 payment of claims.

5 (5) In its discretion, the workers' compensation self-insured group may refer to its  
 6 trustees as directors. If this is done, the provisions of this subtitle referring to  
 7 trustees shall be construed as referring to directors.

8 SECTION 18. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
 9 CREATED TO READ AS FOLLOWS:

10 (1) An employer joining a workers' compensation self-insured group after the group  
 11 has been issued a certificate of filing shall submit an application for membership  
 12 to the board of trustees or its administrator and enter into an indemnity  
 13 agreement. Membership shall not take effect earlier than each member's date of  
 14 application. The application for membership and its approval shall be maintained  
 15 as permanent records of the board of trustees. The board of trustees shall require  
 16 each member to execute a joint and several liability agreement, or other annual  
 17 ratification or affirmation of indemnity, upon each renewal.

18 (2) The self-insured group shall be considered an individual employer for all  
 19 purposes of taxation and the individual members of the group shall not be  
 20 exposed to tax liability other than liability existing as a result of the indemnity  
 21 agreement with the other group members and the self-insured group.

22 (3) At the discretion of the trustees, the self-insured group may include the Kentucky  
 23 employees of foreign (out-of-state) employers.

24 (4) Individual members of a workers' compensation self-insured group shall be  
 25 subject to expulsion, nonrenewal or cancellation by the group by giving the  
 26 member and the commissioner of the Department of Workers' Claims thirty (30)  
 27 days advance notice. Such expulsion, nonrenewal or cancellation shall be

1 executed in accordance with the bylaws of the group and for reasons including  
 2 but not limited to:

3 (a) Adverse claims experience;

4 (b) Lack of cooperation with safety and loss prevention policies; or

5 (c) Failure to report payroll in accordance with the rules and rating plan of the  
 6 self-insured group.

7 (5) At least thirty (30) days prior to the due date, the trustees shall notify each group  
 8 member of all premiums due, including adjustments. Failure by a member to pay  
 9 the premium or assessments due prior to the due date may result in immediate  
 10 cancellation from the group by the trustees. Ten (10) days advance notice of such  
 11 cancellation shall be given to the member and the commissioner of the  
 12 Department of Workers' Claims.

13 (6) Individual group members may elect to withdraw from the group only upon sixty  
 14 (60) days written notice to the commissioner of the Department of Workers'  
 15 Claims and the trustees.

16 (7) The trustees shall report to the commissioner any person who behaves  
 17 fraudulently as described in Subtitle 47 of this chapter.

18 (8) A workers' compensation self-insured group shall pay all workers' compensation  
 19 benefits required under KRS Chapter 342 for which each member incurs liability  
 20 during its period of membership, including assessments. A member who elects to  
 21 withdraw its membership or is terminated by a group remains liable for workers'  
 22 compensation liabilities, obligations, and assessments, during the terminated or  
 23 withdrawn group member's period of membership. A group member shall not be  
 24 relieved of its workers' compensation liabilities incurred, including assessments,  
 25 during its period of membership except through payment by the group or the  
 26 member of these liabilities.

27 (9) The insolvency or bankruptcy of a group member shall not relieve the workers'

compensation self-insured group or any group member of liability for the payment of workers' compensation benefits incurred during the insolvent or bankrupt group member's period of membership.

SECTION 19. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Except for governmental entities, the trustees shall not accept an employer as a member unless the employer has a net worth of at least two (2) times its estimated annual premium, unless the employer pays its full estimated annual premium in advance. The trustees shall not accept an employer as a member unless the employer meets all other qualifications for membership as set forth in the bylaws of the self-insured group.

SECTION 20. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) If a self-insured group decides to dissolve its self-insured program, the trustees shall:

(a) File a detailed plan of dissolution with the commissioner for prior approval;

(b) Provide sixty (60) days written notice by certified mail to the commissioner and each group member;

(c) Pay approved dividends; and

(d) Establish arrangements for the continued payment and servicing of all outstanding claims, including incurred but not reported claims.

(2) The commissioner shall approve the plan unless the commissioner determines it to be unlawful, unfair, inequitable, or prejudicial to the interests of the members or injured workers, or the plan does not fully discharge all obligations of the group.

SECTION 21. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:



1 The board of trustees of each workers' compensation self-insured group shall establish  
 2 a formal conflict of interest policy or code of conduct applicable to the board of  
 3 trustees, officers and employees that includes a description of the system used to  
 4 monitor compliance with the conflict of interest policy or code of conduct.

5 SECTION 22. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER  
 6 304 IS CREATED TO READ AS FOLLOWS:

7 (1) In addition to reports required under Section 12 of this Act, each workers'  
 8 compensation self-insured group shall file with the commissioner an annual  
 9 statement of financial condition audited by an independent certified public  
 10 accountant on or before one hundred and twenty (120) days from the end of the  
 11 group's fiscal year for the immediately preceding fiscal year. The annual  
 12 financial statement shall be on a form approved by the commissioner and in  
 13 accordance with Generally Accepted Accounting Principles.

14 (2) The annual financial statement shall include actuarially-appropriate reserves  
 15 for:

16 (a) Known claims and expenses related to such claims;

17 (b) Claims incurred but not reported and any expenses associated such claims;

18 and

19 (c) Unearned premiums, contributions, and assessments.

20 (3) The annual financial statement shall also include an actuarial opinion by a  
 21 qualified actuary and a supporting reserve study regarding reserves for known  
 22 claims and expenses associated with such claims. The reserve study shall include  
 23 documentation sufficient for another actuary practicing in the same field to  
 24 evaluate the work. The documentation shall describe clearly the sources of data,  
 25 material assumptions, and methods.

26 (4) The following statements shall be included with the annual financial statement:

27 (a) Balance sheet;

- 1 (b) Statement of gain or loss from operations;
- 2 (c) Statement of changes in financial position; and
- 3 (d) Notes to financial statements required by Generally Accepted Accounting
- 4 Principles which shall include a narrative explanation of all material
- 5 transactions and balances of the self-insured group.

- 6 (5) No person shall make a deceptive statement or fail to correct a misstatement in
- 7 connection with the solicitation of membership of a self-insured group.

8 SECTION 23. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
9 CREATED TO READ AS FOLLOWS:

- 10 (1) A workers' compensation self-insured group shall file with the commissioner its
- 11 rates and supplementary rating information and any changes made to its rates
- 12 and supplementary information.

- 13 (a) Within one year of the effective date of this Act, each existing workers'
- 14 compensation self-insured group shall place on file with the commissioner its
- 15 existing rates and supplementary rating information.

- 16 (b) The initial rates and supplementary rating information of any workers'
- 17 compensation self-insured group newly formed after the effective date of this Act,
- 18 shall not become effective until filed with and approved by the commissioner.

- 19 (c) Any changes made to a workers' compensation self-insured group's rates or
- 20 supplementary rating information shall be filed pursuant to KRS 304.13-053.

- 21 (2) A workers' compensation self-insured group shall file with the commissioner its
- 22 existing coverage forms and any changes made to such forms, in accordance with
- 23 KRS 304.14-120.

- 24 (a) Within one year of the effective date of this Act, each existing workers'
- 25 compensation self-insured group shall place on file with the commissioner its
- 26 existing coverage forms.

- 27 (b) The initial coverage forms of any workers' compensation self-insured group

newly formed after the effective date of this Act, shall not be used or delivered until filed with and approved by the commissioner pursuant to KRS 304.14-120.

(c) Any changes made to a workers' compensation self-insured group's coverage forms shall be filed in accordance with KRS 304.14-120.

(d) The commissioner shall disapprove any coverage form required to be filed under KRS 304.14-120, or withdraw any previous approval such form, only on one (1) or more of the following grounds:

1. If the coverage form is in any respect in violation of, or does not comply with, this subtitle or KRS Chapter 342.

2. If the coverage form contains or incorporates by reference, where the incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

3. If the coverage form has any title, heading, or other indication of it provisions which is misleading, or is printed in a size of type or manner of reproduction as to make the form substantially illegible.

(3) Coverage form filings shall be accompanied by a filing fee as set forth in KRS 304.4-010 and administrative regulations promulgated by the commissioner. Filings shall be open to public inspection at any reasonable time. Copies may be obtained by any person on request and on payment of a fee specified in Subtitle 4 of this chapter.

SECTION 24. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner shall promulgate administrative regulations setting forth the requirements for aggregate excess insurance and the standards for granting a

1       waiver.

2       (2) Except for a worker's compensation self-insured group granted a waiver, the  
 3       trustees shall purchase aggregate excess insurance.

4       (3) The trustees shall purchase specific excess insurance coverage with a limit of at  
 5       least twenty-five million dollars (\$25,000,000) per occurrence.

6       (4) To be eligible to write excess liability coverage for a self-insured group, a casualty  
 7       insurance company shall at all times maintain twenty-five million dollars  
 8       (\$25,000,000) of minimum policyholder surplus.

9       SECTION 25. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
 10      CREATED TO READ AS FOLLOWS:

11     (1) In the computation of the retained liabilities of the self-insured group, reserves  
 12     for claims or projected reserves for claims may be discounted for their present  
 13     value, if:

14     (a) The discounting is based upon the computation of a qualified actuary;

15     (b) The computations and supporting documentation are filed annually in  
 16     writing with the commissioner.

17     (2) Discounting shall be approved by the commissioner unless:

18     (a) The actuary is found to be unqualified by the commissioner; or

19     (b) The computations and supporting documentation presented by the actuary  
 20     are rejected based on the opinion of the commissioners' qualified actuary.

21     SECTION 26. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
 22     CREATED TO READ AS FOLLOWS:

23     (1) Each member of a workers' compensation self-insured group shall receive  
 24     written evidence of coverage by the group.

25     (2) All evidences of coverage issued pursuant to this section shall contain coverage  
 26     terms, conditions, and exclusions.

27     (3) All evidences of coverage issued pursuant to this section by a self-insured group,

1 shall contain the following disclosure in prominent, contrasting type: THIS  
 2 COVERAGE HAS BEEN PLACED WITH A WORKERS' COMPENSATION  
 3 SELF-INSURED GROUP WHICH IS REGULATED BY THE KENTUCKY  
 4 DEPARTMENT OF INSURANCE AND HAS RECEIVED A CERTIFICATE  
 5 OF FILING FROM THE COMMONWEALTH OF KENTUCKY. CLAIMS  
 6 AGAINST GROUP MEMBERS ARE COVERED BY THE SELF-INSURED  
 7 CROUP INSURANCE GUARANTY ASSOCIATION, BUT ARE NOT  
 8 COVERED BY THE KENTUCKY INSURANCE GUARANTY ASSOCIATION.  
 9 GROUP MEMBERS SHALL BE ASSESSED IN THE EVENT OF  
 10 INSOLVENCY OF THE WORKERS' COMPENSATION SELF-INSURED  
 11 GROUP.

12 (4) All evidences of coverage issued pursuant to this section by a workers'  
 13 compensation self-insured group formed by governmental entities which have  
 14 joint and several liability, shall contain the following disclosure in prominent,  
 15 contrasting type: THIS COVERAGE HAS BEEN PLACED WITH A  
 16 WORKERS' COMPENSATION SELF-INSURED GROUP WHICH HAS  
 17 RECEIVED A CERTIFICATE OF FILING FROM THE COMMONWEALTH  
 18 OF KENTUCKY. CLAIMS AGAINST GROUP MEMBERS ARE NOT  
 19 COVERED BY THE KENTUCKY INSURANCE GUARANTY ASSOCIATION.

20 SECTION 27. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
 21 CREATED TO READ AS FOLLOWS:

22 (1) If a workers' compensation self-insured group has a members' fund balance that  
 23 is less than the minimum amount required by this subtitle of one million dollars  
 24 (\$1,000,000) and not a negative members' fund balance reported on an annual  
 25 financial filing or by a report on examination, then within thirty (30) days of the  
 26 filing or report the self-insured group shall file with the commissioner a written  
 27 report that identifies the cause of the decrease in the fund balance, describes a

plan for remedying the decrease in the fund balance, and identifies measures to be implemented to avoid similar future decreases in the fund balance. A report filed with the commissioner under this subsection may be approved, disapproved, or modified by the commissioner. A self-insured group may cease operating under a report filed with the commissioner under this subsection after the self-insured group's members' fund balance is one million dollars (\$1,000,000) or greater and the commissioner has approved in writing the lifting of the terms of the report. A report filed with the commissioner under this subsection shall be deemed part of the self-insured group's organizational documents for purposes of Section 12 of this Act.

(2) A workers' compensation self-insured group shall report any deficiency to the commissioner as soon as it is identified. A deficiency reported on an annual financial filing or by a report on examination shall be deemed a verified deficiency. If a workers' compensation self-insured group has a verified deficiency, the deficit amount shall be made up immediately from the following:

(a) Surplus funds from a fund year other than the current fund year after prior notice of the transfer has been given to the commissioner;

(b) Implementation of the previously approved assessment plan; or

(c) Alternative methods as the commissioner may direct or approve that provide financial security in the form of surety, deposit, letter of credit, guarantee or other assets or obligation.

(3) If a workers' compensation self-insured group fails to remedy a deficit as required in subsection (2) of this section, the commissioner shall order the group to do so.

(4) If a workers' compensation self-insured group fails to remedy a deficit or make the required assessment of its members within thirty (30) days after the commissioner orders the group to do so, the group shall be deemed to be in

hazardous financial condition and insolvent, under Subtitle 33 of this chapter, and the commissioner may file a petition for delinquency proceedings, as defined in Subtitle 33 of this chapter, in Franklin Circuit Court.

(5) The commissioner shall place a workers' compensation self-insured group into delinquency proceedings in accordance with the provisions of Subtitle 33 of this chapter if the workers' compensation self-insured group is in hazardous financial condition, insolvent or about to become insolvent, no longer financially responsible and may reasonably be expected to be unable to meet its obligations to members or prospective members, has failed to remedy a deficiency in a reasonable and timely manner, or any other grounds that are provided in Subtitle 33 of this chapter. A self-insured group shall be placed in delinquency proceedings as an insurer, pursuant to Subtitle 33 of this chapter.

(6) The commissioner may approve bulk reinsurance or any other transfer of the book of business if he or she finds that it is in the best interests of the members and their employees.

SECTION 28. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) After a hearing or upon agreement by the workers' compensation self-insured group, the commissioner may suspend or revoke the certificate of filing of a self-insured group, impose a civil penalty of up to ten thousand dollars (\$10,000) per violation, or both, if the group:

(a) Operates significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under this subtitle, or administrative regulations relating to this subtitle, unless amendments to the submissions have been filed with and approved by the commissioner or there has been a significant and adverse change in the management of the self-insured

1 group;

2 (b) Or any person at the direction of the group advertises or merchandises its  
 3 services in an untrue, misrepresentative, misleading, deceptive, or unfair  
 4 manner, or engages in unfair or deceptive practices as defined in Subtitle 12  
 5 of this chapter;

6 (c) Violates the provisions of this subtitle or administrative regulations adopted  
 7 thereunder;

8 (d) Obtains a certificate of filing by unfair or deceptive means;

9 (e) Misappropriates, converts illegally, withholds or refuses to pay upon proper  
 10 demand any moneys that belong to a member, an employee of a member, or  
 11 a person otherwise entitled to such moneys by the group or its  
 12 administrator; or

13 (f) Violated or failed to correct a violation of this subtitle or administrative  
 14 regulations promulgated under this subtitle, within a reasonable time period  
 15 established by the commissioner in administrative regulations.

16 (2) In addition the commissioner may impose a civil penalty of up to ten thousand  
 17 dollars (\$10,000) per day for continuing violations.

18 (3) The commissioner shall conduct a hearing under this section in accordance with  
 19 Subtitle 2 of this chapter. The ruling of the commissioner may be appealed to  
 20 Franklin Circuit Court in accordance with KRS 304.2-370. The commissioner  
 21 during the pendency of an appeal or request for a hearing may utilize the security  
 22 deposit provided by the self-insured group to make payments of any workers'  
 23 compensation benefits currently due.

24 (4) If the commissioner revokes a self-insured group's certification, the  
 25 commissioner shall immediately notify the Kentucky group self-insurance  
 26 guaranty fund as established in KRS 342.906(2).

27 (5) When a certificate of filing of a self-insured group is suspended, the group shall



1 not, during the period of suspension, enroll any new participants or engage in  
 2 any advertising or solicitation.

3 (6) If the certificate of filing of a self-insured group is revoked for reasons other than  
 4 hazardous financial condition, the group shall proceed, immediately following  
 5 the effective date of the order of revocation, to conclude its affairs, and shall  
 6 conduct no further business except as may be essential to the orderly conclusion  
 7 of the affairs of the group. The group shall engage in no further advertising or  
 8 solicitation. The commissioner may, by written order, prevent further operation  
 9 of the self-insured group if further operation is not deemed to be in the best  
 10 interest of the members, and the self-insured group's members will be afforded  
 11 the greatest practical opportunity to obtain workers' compensation coverage  
 12 elsewhere. If the commissioner permits further operation, the workers'  
 13 compensation self-insured group shall continue to collect the premiums and  
 14 assessments required of its members.

15 (7) The commissioner, in his or her discretion and without advance notice or a  
 16 hearing, may suspend or revoke the certificate of filing of any workers'  
 17 compensation self-insured group upon commencement of the following  
 18 proceedings:

19 (a) Receivership;

20 (b) Conservatorship;

21 (c) Rehabilitation; or

22 (d) Other delinquency proceedings.

23 SECTION 29. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS  
 24 CREATED TO READ AS FOLLOWS:

25 Nothing in this subtitle nor any administrative regulation adopted under the authority  
 26 of this subtitle shall require any workers' compensation self-insured group formed by  
 27 governmental entities or its members to take any action in violation of the Constitution

of the Commonwealth. Nothing in this subtitle nor any administrative regulations promulgated by the commissioner shall change the obligation of a workers' compensation self-insured group to comply with KRS Chapter 342.

SECTION 30. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A person shall not:

(a) Make any deceptive statement or omit material facts in connection with solicitation for membership in a workers' compensation self-insured group; or

(b) Guarantee the payment of dividends or use statements or words in, or in connection with, any coverage which imply that the payment of dividends is guaranteed to occur.

(2) A workers' compensation self-insured group shall not engage in unfair business practices as defined by KRS Chapter 342, and shall:

(a) Respond to an inquiry from the commissioner on matters other than workers' compensation claims within fifteen(15) working days of receipt of such inquiry; and

(b) Respond to an inquiry from the commissioner of the Department of Workers' Claims on matters concerning workers' compensation claims within fifteen (15) working days of receipt of such inquiry.

SECTION 31. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A group self-insurance fund regulated under this subtitle and administrative regulations promulgated by the commissioner shall be subject to the provisions of this subtitle and the provisions of KRS 304.2-310 to 304.2-370, to the extent applicable and not in conflict with the expressed provisions of this subtitle.

SECTION 32. A NEW SECTION OF KRS CHAPTER 304 IS CREATED TO

1 READ AS FOLLOWS:

2 *Annually on or before the fifteenth day of December, the commissioner shall make a*  
 3 *report to the Governor and the Interim Joint Committees of Banking and Insurance*  
 4 *and Labor and Industry on the status of workers' compensation self-insured groups.*

5 Section 33. KRS 304.33-020 is amended to read as follows:

6 The proceedings authorized by this subtitle may be applied to:

- 7 (1) All domestic insurers, whether or not they purport to do business in this state;
- 8 (2) All insurers who are doing, or have done, an insurance business in this state, and  
 9 against whom claims arising from that business may exist now or in the future;
- 10 (3) All insurers who purport to do an insurance business in this state;
- 11 (4) All insurers who have insureds resident in this state;
- 12 (5) All other persons organized or in the process of organizing with the intent to do an  
 13 insurance business in this state;
- 14 (6) All fraternal benefit societies as defined in Subtitle 29;
- 15 (7) All nonprofit hospital, medical-surgical, dental, and health service corporations, as  
 16 defined in Subtitle 32;
- 17 (8) All health maintenance organizations as defined in Subtitle 38;~~and~~
- 18 (9) All limited health service organizations as defined in KRS 304.38A-010;
- 19 *(10) Workers' compensation self-insured groups authorized in Section 45 of this Act;*

20 *and*

21 *(11) Workers' compensation self-insured groups authorized in Section 2 of this Act*  
 22 *and defined in Section 3 of this Act.*

23 Section 34. KRS 342.0011 is amended to read as follows:

24 As used in this chapter, unless the context otherwise requires:

- 25 (1) "Injury" means any work-related traumatic event or series of traumatic events,  
 26 including cumulative trauma, arising out of and in the course of employment which  
 27 is the proximate cause producing a harmful change in the human organism

1 evidenced by objective medical findings. "Injury" does not include the effects of the  
2 natural aging process, and does not include any communicable disease unless the  
3 risk of contracting the disease is increased by the nature of the employment.  
4 "Injury" when used generally, unless the context indicates otherwise, shall include  
5 an occupational disease and damage to a prosthetic appliance, but shall not include  
6 a psychological, psychiatric, or stress-related change in the human organism, unless  
7 it is a direct result of a physical injury.

8 (2) "Occupational disease" means a disease arising out of and in the course of the  
9 employment.

10 (3) An occupational disease as defined in this chapter shall be deemed to arise out of  
11 the employment if there is apparent to the rational mind, upon consideration of all  
12 the circumstances, a causal connection between the conditions under which the  
13 work is performed and the occupational disease, and which can be seen to have  
14 followed as a natural incident to the work as a result of the exposure occasioned by  
15 the nature of the employment and which can be fairly traced to the employment as  
16 the proximate cause. The occupational disease shall be incidental to the character of  
17 the business and not independent of the relationship of employer and employee. An  
18 occupational disease need not have been foreseen or expected but, after its  
19 contraction, it must appear to be related to a risk connected with the employment  
20 and to have flowed from that source as a rational consequence.

21 (4) "Injurious exposure" shall mean that exposure to occupational hazard which would,  
22 independently of any other cause whatsoever, produce or cause the disease for  
23 which the claim is made.

24 (5) "Death" means death resulting from an injury or occupational disease.

25 (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the  
26 liability of employers under this chapter and includes a self-insurer.

27 (7) "Self-insurer" is an employer who has been authorized under the provisions of this

1 chapter to carry his own liability on his employees covered by this chapter.

2 (8) "Department" means the Department of Workers' Claims in the Labor Cabinet.

3 (9) "Commissioner" means the commissioner of the Department of Workers' Claims.

4 (10) "Board" means the Workers' Compensation Board.

5 (11) (a) "Temporary total disability" means the condition of an employee who has not  
6 reached maximum medical improvement from an injury and has not reached a  
7 level of improvement that would permit a return to employment;

8 (b) "Permanent partial disability" means the condition of an employee who, due to  
9 an injury, has a permanent disability rating but retains the ability to work; and

10 (c) "Permanent total disability" means the condition of an employee who, due to  
11 an injury, has a permanent disability rating and has a complete and permanent  
12 inability to perform any type of work as a result of an injury, except that total  
13 disability shall be irrebuttably presumed to exist for an injury that results in:

- 14 1. Total and permanent loss of sight in both eyes;
- 15 2. Loss of both feet at or above the ankle;
- 16 3. Loss of both hands at or above the wrist;
- 17 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at  
18 or above the wrist;
- 19 5. Permanent and complete paralysis of both arms, both legs, or one (1)  
20 arm and one (1) leg;
- 21 6. Incurable insanity or imbecility; or
- 22 7. Total loss of hearing.

23 (12) "Income benefits" means payments made under the provisions of this chapter to the  
24 disabled worker or his dependents in case of death, excluding medical and related  
25 benefits.

26 (13) "Medical and related benefits" means payments made for medical, hospital, burial,  
27 and other services as provided in this chapter, other than income benefits.

- 1 (14) "Compensation" means all payments made under the provisions of this chapter  
2 representing the sum of income benefits and medical and related benefits.
- 3 (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical  
4 rehabilitation services, medicines, and fittings for artificial or prosthetic devices.
- 5 (16) "Person" means any individual, partnership, including a registered limited liability  
6 partnership, limited partnership, limited liability company, firm, association, trust,  
7 joint venture, corporation, limited liability company, or legal representative thereof.
- 8 (17) "Wages" means, in addition to money payments for services rendered, the  
9 reasonable value of board, rent, housing, lodging, fuel, or similar advantages  
10 received from the employer, and gratuities received in the course of employment  
11 from persons other than the employer as evidenced by the employee's federal and  
12 state tax returns.
- 13 (18) "Agriculture" means the operation of farm premises, including the planting,  
14 cultivation, producing, growing, harvesting, and preparation for market of  
15 agricultural or horticultural commodities thereon, the raising of livestock for food  
16 products and for racing purposes, and poultry thereon, and any work performed as  
17 an incident to or in conjunction with the farm operations. It shall not include the  
18 commercial processing, packing, drying, storing, or canning of such commodities  
19 for market, or making cheese or butter or other dairy products for market.
- 20 (19) "Beneficiary" means any person who is entitled to income benefits or medical and  
21 related benefits under this chapter.
- 22 (20) "United States," when used in a geographic sense, means the several states, the  
23 District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the  
24 territories of the United States.
- 25 (21) "Alien" means a person who is not a citizen, a national, or a resident of the United  
26 States or Canada. Any person not a citizen or national of the United States who  
27 relinquishes or is about to relinquish his residence in the United States shall be

1       regarded as an alien.

2       (22) "Insurance carrier" means every insurance carrier or insurance company authorized  
 3       to do business in the Commonwealth writing workers' compensation insurance  
 4       coverage and includes the Kentucky Employers Mutual Insurance Authority and  
 5       every self-insured group~~[of self insurers]~~ operating under the provisions of this  
 6       chapter.

7       (23) (a) "Severance or processing of coal" means all activities performed in the  
 8       Commonwealth at underground, auger, and surface mining sites; all activities  
 9       performed at tipple or processing plants that clean, break, size, or treat coal;  
 10       and all activities performed at coal loading facilities for trucks, railroads, and  
 11       barges. Severance or processing of coal shall not include acts performed by a  
 12       final consumer if the acts are performed at the site of final consumption.

13       (b) "Engaged in severance or processing of coal" shall include all individuals,  
 14       partnerships, including registered limited liability partnerships, limited  
 15       partnerships, limited liability companies, corporations, joint ventures,  
 16       associations, or any other business entity in the Commonwealth which has  
 17       employees on its payroll who perform any of the acts stated in paragraph (a) of  
 18       this subsection, regardless of whether the acts are performed as owner of the  
 19       coal or on a contract or fee basis for the actual owner of the coal. A business  
 20       entity engaged in the severance or processing of coal, including, but not  
 21       limited to, administrative or selling functions, shall be considered wholly  
 22       engaged in the severance or processing of coal for the purpose of this chapter.  
 23       However, a business entity which is engaged in a separate business activity  
 24       not related to coal, for which a separate premium charge is not made, shall be  
 25       deemed to be engaged in the severance or processing of coal only to the extent  
 26       that the number of employees engaged in the severance or processing of coal  
 27       bears to the total number of employees. Any employee who is involved in the

1 business of severing or processing of coal and business activities not related to  
2 coal shall be prorated based on the time involved in severance or processing  
3 of coal bears to his total time.

4 (24) "Premium" for every self-insured group~~[-of-self-insurers]~~ means any and all  
5 assessments levied on its members by such group or contributed to it by the  
6 members thereof. For special fund assessment purposes, "premium" also includes  
7 any and all membership dues, fees, or other payments by members of the group to  
8 associations or other entities used for underwriting, claims handling, loss control,  
9 premium audit, actuarial, or other services associated with the maintenance or  
10 operation of the self-insurance group.

11 (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for  
12 insurance companies means direct written premiums as reported in the annual  
13 statement to the Kentucky Department of Insurance by insurance companies,  
14 except that "premiums received" includes premiums charged off or deferred,  
15 and, on insurance policies or other evidence of coverage with provisions for  
16 deductibles, the calculated cost for coverage, including experience  
17 modification and premium surcharge or discount, prior to any reduction for  
18 deductibles. The rates, factors, and methods used to calculate the cost for  
19 coverage under this paragraph for insurance policies or other evidence of  
20 coverage with provisions for deductibles shall be the same rates, factors, and  
21 methods normally used by the insurance company in Kentucky to calculate the  
22 cost for coverage for insurance policies or other evidence of coverage without  
23 provisions for deductibles, except that, for insurance policies or other  
24 evidence of coverage with provisions for deductibles effective on or after  
25 January 1, 1995, the calculated cost for coverage shall not include any  
26 schedule rating modification, debits, or credits. The cost for coverage  
27 calculated under this paragraph by insurance companies that issue only



deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. For policies covering leased employees as defined in KRS 342.615, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in KRS 342.615 for each leased employee for that portion of the payroll pertaining to the leased employee.

(b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.

(c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of

coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

(d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors.

(26) "Insurance policy" for an insurance company or self-insured group~~[-self-insurer]~~ means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year.

(27) "Self-insurance year" for a self-insured group~~[-self-insurer]~~ means the annual period of certification of the group created pursuant to KRS 342.350(4) and Section 2 of this Act.

1 (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1)  
2 shall be the projected value of the employer's workers' compensation claims for the  
3 next calendar year as calculated by the commissioner using generally-accepted  
4 actuarial methods as follows:

5 (a) The base period shall be the earliest three (3) calendar years of the five (5)  
6 calendar years immediately preceding the calendar year for which the  
7 calculation is made. The commissioner shall identify each claim of the  
8 employer which has an injury date or date of last injurious exposure to the  
9 cause of an occupational disease during each one (1) of the three (3) calendar  
10 years to be used as the base, and shall assign a value to each claim. The value  
11 shall be the total of the indemnity benefits paid to date and projected to be  
12 paid, adjusted to current benefit levels, plus the medical benefits paid to date  
13 and projected to be paid for the life of the claim, plus the cost of medical and  
14 vocational rehabilitation paid to date and projected to be paid. Adjustment to  
15 current benefit levels shall be done by multiplying the weekly indemnity  
16 benefit for each claim by the number obtained by dividing the statewide  
17 average weekly wage which will be in effect for the year for which the  
18 premium is being calculated by the statewide average weekly wage in effect  
19 during the year in which the injury or date of the last exposure occurred. The  
20 total value of the claims using the adjusted weekly benefit shall then be  
21 calculated by the commissioner. Values for claims in which awards have been  
22 made or settlements reached because of findings of permanent partial or  
23 permanent total disability shall be calculated using the mortality and interest  
24 discount assumptions used in the latest available statistical plan of the  
25 advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The  
26 sum of all calculated values shall be computed for all claims in the base  
27 period.

- 1 (b) The commissioner shall obtain the annual payroll for each of the three (3)  
2 years in the base period for each employer carrying his own risk from records  
3 of the department and from the records of the Department for Employment  
4 Services, Cabinet for Workforce Development. The commissioner shall  
5 multiply each of the three (3) years of payroll by the number obtained by  
6 dividing the statewide average weekly wage which will be in effect for the  
7 year in which the premium is being calculated by the statewide average  
8 weekly wage in effect in each of the years of the base period.
- 9 (c) The commissioner shall divide the total of the adjusted claim values for the  
10 three (3) year base period by the total adjusted payroll for the same three (3)  
11 year period. The value so calculated shall be multiplied by 1.25 and shall then  
12 be multiplied by the employer's most recent annualized payroll, calculated  
13 using records of the department and the Department for Employment Services  
14 data which shall be made available for this purpose on a quarterly basis as  
15 reported, to obtain the premium for the next calendar year for assessment  
16 purposes under KRS 342.122.
- 17 (d) For November 1, 1987, through December 31, 1988, premium for each  
18 employer carrying his own risk shall be an amount calculated by the board  
19 pursuant to the provisions contained in this subsection and such premium  
20 shall be provided to each employer carrying his own risk and to the funding  
21 commission on or before January 1, 1988. Thereafter, the calculations set  
22 forth in this subsection shall be performed annually, at the time each employer  
23 applies or renews his application for certification to carry his own risk for the  
24 next twelve (12) month period and submits payroll and other data in support  
25 of the application. The employer and the funding commission shall be notified  
26 at the time of the certification or recertification of the premium calculated by  
27 the commissioner, which shall form the employer's basis for assessments

1           pursuant to KRS 342.122 for the calendar year beginning on January 1  
2           following the date of certification or recertification.

3           (e) If an employer having fewer than five (5) years of doing business in this state  
4           applies to carry his own risk and is so certified, his premium for the purposes  
5           of KRS 342.122 shall be based on the lesser number of years of experience as  
6           may be available including the two (2) most recent years if necessary to create  
7           a three (3) year base period. If the employer has less than two (2) years of  
8           operation in this state available for the premium calculation, then his premium  
9           shall be the greater of the value obtained by the calculation called for in this  
10          subsection or the amount of security required by the commissioner pursuant to  
11          KRS 342.340(1).

12          (f) If an employer is certified to carry his own risk after having previously insured  
13          the risk, his premium shall be calculated using values obtained from claims  
14          incurred while insured for as many of the years of the base period as may be  
15          necessary to create a full three (3) year base. After the employer is certified to  
16          carry his own risk and has paid all amounts due for assessments upon  
17          premiums paid while insured, he shall be assessed only upon the premium  
18          calculated under this subsection.

19          (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated  
20          as set forth in this subsection.

21          (h) Notwithstanding any other provision of this subsection, the premium of any  
22          employer authorized to carry its own risk for purposes of assessments due  
23          under this chapter shall be no less than thirty cents (\$0.30) per one hundred  
24          dollars (\$100) of the employer's most recent annualized payroll for employees  
25          covered by this chapter.

26          (29) "SIC code" as used in this chapter means the Standard Industrial Classification  
27          Code contained in the latest edition of the Standard Industrial Classification Manual

1 published by the Federal Office of Management and Budget.

2 (30) "Investment interest" means any pecuniary or beneficial interest in a provider of  
 3 medical services or treatment under this chapter, other than a provider in which that  
 4 pecuniary or investment interest is obtained on terms equally available to the public  
 5 through trading on a registered national securities exchange, such as the New York  
 6 Stock Exchange or the American Stock Exchange, or on the National Association of  
 7 Securities Dealers Automated Quotation System.

8 (31) "Managed health care system" means a health care system that employs gatekeeper  
 9 providers, performs utilization review, and does medical bill audits.

10 (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists,  
 11 podiatrists, and osteopathic and chiropractic practitioners acting within the scope of  
 12 their license issued by the Commonwealth.

13 (33) "Objective medical findings" means information gained through direct observation  
 14 and testing of the patient applying objective or standardized methods.

15 (34) "Work" means providing services to another in return for remuneration on a regular  
 16 and sustained basis in a competitive economy.

17 (35) "Permanent impairment rating" means percentage of whole body impairment caused  
 18 by the injury or occupational disease as determined by "Guides to the Evaluation of  
 19 Permanent Impairment," American Medical Association, latest available edition.

20 (36) "Permanent disability rating" means the permanent impairment rating selected by an  
 21 administrative law judge times the factor set forth in the table that appears at KRS  
 22 342.730(1)(b).

23 Section 35. KRS 342.035 is amended to read as follows:

24 (1) Periodically, the commissioner shall promulgate administrative regulations to adopt  
 25 a schedule of fees for the purpose of ensuring that all fees, charges, and  
 26 reimbursements under KRS 342.020 and this section shall be fair, current, and  
 27 reasonable and shall be limited to such charges as are fair, current, and reasonable

1 for similar treatment of injured persons in the same community for like services,  
2 where treatment is paid for by general health insurers. In determining what fees are  
3 reasonable, the commissioner may also consider the increased security of payment  
4 afforded by this chapter. On or before November 1, 1994, and on July 1 every two  
5 (2) years thereafter, the schedule of fees contained in administrative regulations  
6 promulgated pursuant to this section shall be reviewed and updated, if appropriate.  
7 Within ten (10) days of April 4, 1994, the commissioner shall execute a contract  
8 with an appropriately-qualified consultant pursuant to which each of the following  
9 elements within the workers' compensation system are evaluated; the methods of  
10 health care delivery; quality assurance and utilization mechanisms; type, frequency,  
11 and intensity of services; risk management programs; and the schedule of fees  
12 contained in administrative regulation. The consultant shall present  
13 recommendations based on its review to the commissioner not later than sixty (60)  
14 days following execution of the contract. The commissioner shall consider these  
15 recommendations and, not later than thirty (30) days after their receipt, promulgate  
16 a regulation which shall be effective on an emergency basis, to effect a twenty-five  
17 percent (25%) reduction in the total medical costs within the program.

18 (2) No provider of medical services or treatment required by this chapter, its agent,  
19 servant, employee, assignee, employer, or independent contractor acting on behalf  
20 of any medical provider, shall knowingly collect, attempt to collect, coerce, or  
21 attempt to coerce, directly or indirectly, the payment of any charge, for services  
22 covered by a workers' compensation insurance plan for the treatment of a work-  
23 related injury or occupational disease, in excess of that provided by a schedule of  
24 fees, or cause the credit of any employee to be impaired by reason of the employee's  
25 failure or refusal to pay the excess charge. In addition to the penalty imposed in  
26 KRS 342.990 for violations of this subsection, any individual who sustains damages  
27 by any act in violation of the provisions of this subsection shall have a civil cause of

1 action in Circuit Court to enjoin further violations and to recover the actual  
2 damages sustained by the individual, together with the costs of the lawsuit,  
3 including a reasonable attorney's fee.

4 (3) Where these requirements are furnished by a public hospital or other institution,  
5 payment thereof shall be made to the proper authorities conducting it. No  
6 compensation shall be payable for the death or disability of an employee if his death  
7 is caused, or if and insofar as his disability is aggravated, caused, or continued, by  
8 an unreasonable failure to submit to or follow any competent surgical treatment or  
9 medical aid or advice.

10 (4) The commissioner shall, by December 1, 1994, promulgate administrative  
11 regulations to adopt a schedule of fees for the purpose of regulating charges by  
12 medical providers and other health care professionals for testimony presented and  
13 medical reports furnished in the litigation of a claim by an injured employee against  
14 the employer. The workers' compensation medical fee schedule for physicians, 803  
15 KAR 25:089, having an effective date of February 9, 1995, shall remain in effect  
16 until July 1, 1996, or until the effective date of any amendments promulgated by the  
17 commissioner, whichever occurs first, it being determined that this administrative  
18 regulation is within the statutory grant of authority, meets legislative intent, and is  
19 not in conflict with the provisions of this chapter. The medical fee schedule and  
20 amendments shall be fair, current, and reasonable and otherwise comply with this  
21 section.

22 (5) (a) To ensure compliance with subsections (1) and (4) of this section, the  
23 commissioner shall promulgate administrative regulations by December 31,  
24 1994, which require each insurance carrier, self-insured group[~~self-insurer~~],  
25 and self-insured employer to certify to the commissioner the program or plan  
26 it has adopted to ensure compliance.

27 (b) In addition, the commissioner shall periodically have an independent audit



1 conducted by a qualified independent person, firm, company, or other entity  
2 hired by the commissioner, in accordance with the personal service contract  
3 provisions contained in KRS 45A.690 to 45A.725, to ensure that the  
4 requirements of subsection (1) of this section are being met. The independent  
5 person, firm, company, or other entity selected by the commissioner to  
6 conduct the audit shall protect the confidentiality of any information it  
7 receives during the audit, shall divulge information received during the audit  
8 only to the commissioner, and shall use the information for no other purpose  
9 than the audit required by this paragraph.

10 (c) The commissioner shall promulgate administrative regulations governing  
11 medical provider utilization review activities conducted by an insurance  
12 carrier, self-insured group[~~self-insurer~~], or self-insured employer pursuant to  
13 this chapter.

14 (d) Periodically, or upon request, the commissioner shall report to the Interim  
15 Joint Committee on Labor and Industry of the Legislative Research  
16 Commission or to the corresponding standing committees of the General  
17 Assembly, as appropriate, the degree of compliance or lack of compliance  
18 with the provisions of this section and make recommendations thereon.

19 (e) The cost of implementing and carrying out the requirements of this subsection  
20 shall be paid from funds collected pursuant to KRS 342.122.

21 (6) The commissioner may promulgate administrative regulations incorporating  
22 managed care or other concepts intended to reduce costs or to speed the delivery or  
23 payment of medical services to employees receiving medical and related benefits  
24 under this chapter.

25 (7) For purposes of this chapter, any medical provider shall charge only its customary  
26 fee for photocopying requested documents. However, in no event shall a  
27 photocopying fee of a medical provider or photocopying service exceed fifty cents

1 (\$0.50) per page. In addition, there shall be no charge for reviewing any records of a  
 2 medical provider, during regular business hours, by any party who is authorized to  
 3 review the records and who requests a review pursuant to this chapter.

4 (8) (a) The commissioner shall develop or adopt practice parameters or guidelines for  
 5 clinical practice for use by medical providers under this chapter. The  
 6 commissioner may adopt any parameters for clinical practice as developed and  
 7 updated by the federal Agency for Health Care Policy Research, or the  
 8 commissioner may adopt other parameters for clinical practice which are  
 9 developed by qualified bodies, as determined by the commissioner, with  
 10 periodic updating based on data collected during the application of the  
 11 parameters.

12 (b) Any provider of medical services under this chapter who has followed the  
 13 practice parameters or guidelines developed or adopted pursuant to this  
 14 subsection shall be presumed to have met the appropriate legal standard of  
 15 care in medical malpractice cases regardless of any unanticipated  
 16 complication that may thereafter develop or be discovered.

17 Section 36. KRS 342.039 is amended to read as follows:

18 Beginning on January 1, 1995, and pursuant to administrative regulations promulgated  
 19 under KRS Chapter 13A by the commissioner, each insurance company writing workers'  
 20 compensation insurance policies in the Commonwealth, every self-insured group ~~of self-~~  
 21 ~~insurers~~, and each employer carrying its own risk shall file in the manner directed by the  
 22 commissioner, detailed claim information contained in the model regulation developed by  
 23 the National Association of Insurance Commissioners (NAIC) in conjunction with the  
 24 International Association of Industrial Accident Boards and Commissions (IAIABC).

25 Section 37. KRS 342.122 is amended to read as follows:

26 (1) (a) For calendar year 1997 and for each calendar year thereafter, for the purpose  
 27 of funding and prefunding the liabilities of the special fund, financing the

administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards, Apprenticeship and Training and the Office of Labor-Management Relations and Mediation, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group off~~-self-insurers~~] operating under the provisions of KRS 342.350(4) and KRS Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk.

- (b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of September 1 preceding January 1 of each year, for the period remaining until December 31, 2018. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group~~of self-insurers~~] operating under the provisions of KRS 342.350(4) and KRS Chapter 304, and against the premium, as defined in KRS 342.0011, of every

1 employer carrying his own risk.

2 (c) In addition to the assessment imposed in paragraph (a) or (b) of this  
3 subsection, and notwithstanding and prior to the transfer of funds to the Local  
4 Government Economic Assistance Program under KRS 42.450 to 42.495, the  
5 Kentucky Revenue Cabinet shall credit nineteen million dollars (\$19,000,000)  
6 in coal severance tax revenues levied under KRS 143.020 to the benefit  
7 reserve fund within the Kentucky Workers' Compensation Funding  
8 Commission each year beginning with fiscal year 1998 and all fiscal years  
9 thereafter. The annual transfer of nineteen million dollars (\$19,000,000) shall  
10 occur in four (4) equal quarterly payments. These transfers shall occur not  
11 later than the last day of each quarter of each calendar year and shall consist of  
12 four (4) equal payments of four million, seven hundred fifty thousand dollars  
13 (\$4,750,000).

14 (d) All assessments imposed by this section shall be paid to the Kentucky  
15 Workers' Compensation Funding Commission and shall be credited to the  
16 benefit reserve fund within the Kentucky Workers' Compensation Funding  
17 Commission.

18 (e) The assessments imposed in this chapter shall be in lieu of all other  
19 assessments or taxes on workers' compensation premiums.

20 (2) These assessments shall be paid quarterly not later than the thirtieth day of the  
21 month following the end of the quarter in which the premium is received. Receipt  
22 shall be considered timely through actual physical receipt or by postmark of the  
23 United States Postal Service. Employers carrying their own risk and employers  
24 defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal  
25 quarterly installments.

26 (3) The assessments imposed by this section may be collected by the insurance carrier  
27 from his insured. However, the insurance carrier shall not collect from the employer

1 any amount exceeding the assessments imposed pursuant to this section. If the  
 2 insurance carrier collects the assessment from an insured, the assessment shall be  
 3 collected at the same time and in the same proportion as the premium is collected.  
 4 The assessment for an insurance policy or other evidence of coverage providing a  
 5 deductible may be collected in accordance with this chapter on a premium amount  
 6 that equates to the premium that would have applied without the deductible. Each  
 7 statement from an insurance carrier presented to an insured reflecting premium and  
 8 assessment amounts shall clearly identify and distinguish the amount to be paid for  
 9 premium and the amount to be paid for assessments. No insurance carrier shall  
 10 collect from an insured an amount in excess of the assessment percentages imposed  
 11 by this chapter. The assessment for an insurance policy or other evidence of  
 12 coverage providing a deductible may be collected in accordance with this chapter on  
 13 a premium amount that equates to the premium that would have applied without the  
 14 deductible. The percentages imposed by this chapter for an insurance policy issued  
 15 by an insurance company shall be those percentages in effect on the annual effective  
 16 date of the policy, regardless of the date that the premium is actually received by the  
 17 insurance company.

18 (4) A *self-insured* group~~[-self insurance association]~~ may elect to report its premiums  
 19 and to have its assessments computed in the same manner as insurance companies.  
 20 This election may not be rescinded for at least ten (10) years, nor may this election  
 21 be made a second time for at least another ten (10) years, except that the board of  
 22 directors of the funding commission may, at its discretion, waive the ten (10) year  
 23 ban on a case-by-case basis after formal petition has been made to the funding  
 24 commission by a *self-insured* group~~[-self insurance association]~~.

25 (5) The funding commission, as part of the collection and auditing of the special fund  
 26 assessments required by this section, shall annually require each insurance carrier  
 27 and each *self-insured* group~~[-self insurer]~~ to provide a list of employers which it

1 has insured or which are members and the amount collected from each employer.  
 2 Additionally, the funding commission shall require each entity paying a special fund  
 3 assessment to report the SIC code for each employer and the amount of premium  
 4 collected from each SIC code. An insurance carrier or self-insured group~~[-self-~~  
 5 ~~insurer]~~ may require its insureds or members to furnish the SIC code for each of  
 6 their employees. However, the failure of any employer to furnish said codes shall  
 7 not relieve the insurance carrier or self-insured group~~[-self-insurer]~~ from the  
 8 obligation to furnish same to the funding commission. The Department for  
 9 Employment Services, Cabinet for Workforce Development is hereby directed to  
 10 make available the SIC codes assigned in its records to specific employers to aid in  
 11 the reporting and recording of the special fund assessment data.

12 (6) Each self-insured employer, self-insured group~~[-self-insurer]~~, or insurance carrier  
 13 shall provide any information and submit any reports the Revenue Cabinet or the  
 14 funding commission may require to effectuate the provisions of this section. In  
 15 addition, the funding commission may enter reciprocal agreements with other  
 16 governmental agencies for the exchange of information necessary to effectuate the  
 17 provisions of this section.

18 (7) The special fund shall be required to maintain a central claim registry of all claims  
 19 to which it is named a party, giving each such claim a unique claim number and  
 20 thereafter recording the status of each claim on a current basis. The registry shall be  
 21 established by January 26, 1988, for all claims on which payments were made since  
 22 July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all  
 23 claim files in the possession of the special fund.

24 (8) The fund heretofore designated as the subsequent claim fund is abolished, and there  
 25 is substituted therefor the special fund as set out by this section, and all moneys and  
 26 properties owned by the subsequent claim fund are transferred to the special fund.

27 (9) Notwithstanding any other provisions of this section or this chapter to the contrary,

1 the total amount of funds collected pursuant to the assessment rates adopted by the  
2 funding commission shall not be limited to the provisions of this section.

3 (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS  
4 342.122 shall forever remain applicable to premiums received on policies with  
5 effective dates prior to January 1, 1997, by every insurance carrier writing workers'  
6 compensation insurance in the Commonwealth, by every self-insured group~~[of~~  
7 ~~self-insurers]~~ operating under the provision of KRS 342.350(4) and KRS Chapter  
8 304, and against the premium, as defined in KRS 342.0011, of every employer  
9 carrying his own risk.

10 Section 38. KRS 342.1231 is amended to read as follows:

11 (1) The funding commission may mail to the taxpayer a notice of any assessment  
12 assessed by it. The assessment shall be final if not protested in writing to the  
13 funding commission within thirty (30) days from the date of notice. The protest  
14 shall be accompanied by a supporting statement setting forth the grounds upon  
15 which the protest is made. Upon written request, the funding commission may  
16 extend the time for filing the supporting statement if it appears the delay is  
17 necessary and unavoidable. The refusal of such extension may be reviewed in the  
18 same manner as a protested assessment.

19 (2) After a timely protest has been filed, the taxpayer may request a conference with the  
20 funding commission. The request shall be granted in writing stating the date and  
21 time set for the conference. The taxpayer may appear in person or by representative.  
22 Further conferences may be held by mutual agreement.

23 (3) After considering the taxpayer's protest, including any matters presented at the final  
24 conference, the funding commission shall issue a final ruling on any matter still in  
25 controversy, which shall be mailed to the taxpayer. The ruling shall state that it is a  
26 final ruling of the funding commission, generally state the issues in controversy, the  
27 funding commission's position thereon and set forth the procedure for prosecuting

1 an appeal to the Kentucky Board of Tax Appeals.

2 (4) The taxpayer may request in writing a final ruling at any time after filing a timely  
3 protest and supporting statement. When a final ruling is requested, the funding  
4 commission shall issue such ruling within thirty (30) days from the date the request  
5 is received by the funding commission.

6 (5) After a final ruling has been issued, the taxpayer may appeal to the Kentucky Board  
7 of Tax Appeals pursuant to the provisions of KRS 131.340.

8 (6) The expenses incurred by the funding commission in conducting audits required in  
9 this chapter shall be paid by the insurance companies in accordance with  
10 administrative regulations promulgated by the funding commission.

11 (7) "Taxpayer" as used in this section means insurance carrier, self-insured group~~self-~~  
12 ~~insured~~ and self-insured employer.

13 Section 39. KRS 342.1242 is amended to read as follows:

14 (1) There is created the Kentucky coal workers' pneumoconiosis fund which shall have  
15 one-half (1/2) of the liability for income benefits, including retraining benefits,  
16 payable for claims brought under KRS 342.732 for last exposure incurred on or  
17 after December 12, 1996. Income benefit payments by the Kentucky coal workers'  
18 pneumoconiosis fund shall be made contemporaneous with the payments made by  
19 the employer, except that the employer shall make all payments due under a final  
20 award or approved settlement until the liability of the Kentucky coal workers'  
21 pneumoconiosis fund is established under subsection (2) of this section and the coal  
22 workers' pneumoconiosis fund shall reimburse the employer for such payments to  
23 the extent of its liability.

24 (2) The employer shall defend any claim brought under KRS 342.732 and upon  
25 conclusion shall seek participation in payment of the final award or settlement by  
26 the Kentucky coal workers' pneumoconiosis fund by making written request upon  
27 the director in the manner prescribed by administrative regulation to be promulgated



1 by the commissioner of the Department of Workers' Claims.

2 (3) (a) For the purpose of funding and prefunding the liabilities of the Kentucky coal  
3 workers' pneumoconiosis fund and financing the administration and operation  
4 of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget  
5 of the Commonwealth enacted by the General Assembly, a Kentucky coal  
6 workers' pneumoconiosis fund assessment at the rate of three percent (3%) is  
7 hereby imposed upon the amount of workers' compensation premiums  
8 received on and after January 1, 1997, through December 31, 1997, by every  
9 insurance carrier writing workers' compensation insurance in the  
10 Commonwealth and by every self-insured group ~~{of self-insurers}~~ operating  
11 under the provisions of KRS 342.350(4) and KRS Chapter 304, from  
12 employers engaged in the severance or processing of coal. Likewise, on and  
13 after January 1, 1997, through December 31, 1997, an assessment at the rate  
14 of three percent (3%) of premium shall be paid by every employer engaged in  
15 the severance or processing of coal who is carrying his or her own risk.

16 (b) In addition to the assessment imposed in paragraph (a) of this subsection, an  
17 additional Kentucky coal workers' pneumoconiosis fund assessment at the rate  
18 of two and one-half cents (\$0.025) per ton is hereby imposed upon the total  
19 annual amount of tons of coal severed on or after January 1, 1997, through  
20 December 31, 1997, by every entity engaged in the severance of coal as  
21 required pursuant to KRS Chapter 143.

22 (c) As of September 1, 1997, and each year thereafter, the funding commission  
23 shall determine the assets of the fund and the claim and administrative  
24 expense liability incurred by the fund for all previous years and shall establish  
25 the rates under the provisions of paragraphs (a) and (b) of this subsection  
26 necessary as of January 1 of the next year to fully fund and prefund all claim  
27 liabilities and administrative expenses through December 31 of the next year

1 of operations. The assessment rate authorized by this section for premiums  
2 received and tons of coal severed shall be set so as to receive fifty percent  
3 (50%) of the needed revenue from each assessment. Notice of any rate  
4 changes shall be provided no later than December 1 of the year preceding the  
5 rate change.

6 (4) All assessments imposed by this section shall be paid to the Kentucky Workers'  
7 Compensation Funding Commission and shall be credited to a separate account  
8 within the benefit reserve fund within the Kentucky Workers' Compensation  
9 Funding Commission. In addition, the powers and responsibilities of the Kentucky  
10 Workers' Compensation Funding Commission including its fiduciary duties and  
11 responsibilities relating to assessments collected for the special fund pursuant to  
12 KRS 342.122, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply  
13 to assessments collected for the Kentucky coal workers' pneumoconiosis fund  
14 created pursuant to this section. Each entity subject to assessments for the Kentucky  
15 coal workers' pneumoconiosis fund shall provide any and all information requested  
16 by the Kentucky Workers' Compensation Funding Commission necessary to carry  
17 out its powers and responsibilities relating thereto.

18 (5) These assessments shall be paid quarterly not later than the thirtieth day of the  
19 month following the end of the quarter in which the premium is received or the coal  
20 is processed or severed. Receipt shall be considered timely through actual physical  
21 receipt or by postmark by the United States Postal Service. Employers carrying their  
22 own risk and employers defined in KRS 342.630(2) shall pay the annual  
23 assessments in four (4) equal quarterly installments. Penalty and interest penalties  
24 imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers'  
25 Compensation Funding Commission to waive part or all of the penalty shall apply  
26 to assessments for the Kentucky coal workers' pneumoconiosis fund in the same  
27 manner and amount as they are imposed on assessments for the special fund under

1 KRS 342.122.

2 (6) Notwithstanding any other provisions of this section or this chapter to the contrary,  
3 the total amount of funds collected pursuant to the assessment rates adopted by the  
4 funding commission shall not be limited to the provisions of this section.

5 (7) Claims for benefits by reason of the development of coal workers' pneumoconiosis  
6 shall be maintained pursuant to KRS 342.732, and the Kentucky coal workers'  
7 pneumoconiosis fund shall be liable for payment of a part of the liability only for  
8 employees of employers engaged in the severance or processing of coal as defined  
9 in KRS 342.0011(23)(a) and (b).

10 Section 40. KRS 342.267 is amended to read as follows:

11 If an insurance carrier, self-insured~~self-insurance~~ group, or self-insured employer  
12 providing workers' compensation coverage engages in claims settlement practices in  
13 violation of this chapter, or the provisions of KRS 304.12-230, the commissioner of the  
14 Department of Workers' Claims shall fine the insurance company, self-insured~~self-~~  
15 ~~insurance~~ group, or self-insured employer the sum of one thousand dollars (\$1,000) to  
16 five thousand dollars (\$5,000) for each violation and if they have a pattern of violations,  
17 the commissioner may revoke the certificate of self-insurance or request the  
18 commissioner of insurance to revoke the certificate of authority of the insurance carrier or  
19 the self-insured group.

20 Section 41. KRS 342.340 is amended to read as follows:

21 (1) Every employer under this chapter shall either insure and keep insured his liability  
22 for compensation hereunder in some corporation, association, or organization  
23 authorized to transact the business of workers' compensation insurance in this state  
24 or shall furnish to the commissioner satisfactory proof of his financial ability to pay  
25 directly the compensation in the amount and manner and when due as provided for  
26 in this chapter. In the latter case, the commissioner shall require the deposit of an  
27 acceptable security, indemnity, or bond to secure, to the extent the commissioner

1 directs, the payment of compensation liabilities as they are incurred.

- 2 (2) Every employer subject to this chapter shall file, or have filed on its behalf, with the  
 3 department, as often as may be necessary, evidence of its compliance with the  
 4 provisions of this section and all others relating hereto. Any insurance carrier or  
 5 self-insured group~~self insurance association~~ providing workers' compensation  
 6 insurance coverage for a Kentucky location shall file on behalf of the employer,  
 7 with the commissioner, evidence of the employer's compliance with this chapter.  
 8 The filing shall be made within ten (10) days after the issuance of a policy,  
 9 endorsement to a policy, or similar documentation of coverage. Every employer  
 10 who has complied with the foregoing provision and has subsequently canceled its  
 11 insurance or its membership in an approved self-insured group~~self insurance~~  
 12 ~~association~~, as the case may be, shall immediately notify, or have notice given on  
 13 its behalf to the department of the cancellation, the date thereof, and the reasons  
 14 therefor; and every insurance carrier or self-insured group~~self insurance~~  
 15 ~~association~~ shall in like manner notify the commissioner upon the cancellation,  
 16 lapse, termination, expiration by reason of termination of policy period, or  
 17 nonrenewal of any policy issued by it or termination of any membership agreement,  
 18 whichever is applicable under the provisions of this chapter, except that the carrier  
 19 or self-insured group~~self insurance association~~ need not set forth its reasons  
 20 therefor unless requested by the commissioner. The above filings are to be made on  
 21 the forms prescribed by the commissioner. Termination of any policy of insurance  
 22 issued under the provisions of this chapter shall take effect no greater than ten (10)  
 23 days prior to the receipt of the notification by the commissioner unless the employer  
 24 has obtained other insurance and the commissioner is notified of that fact by the  
 25 insurer assuming the risk. Upon determination that any employer under this chapter  
 26 has failed to comply with these provisions, the commissioner shall promptly notify  
 27 interested government agencies of this failure and, with particular reference to

1 employers engaged in coal mining, the commissioner shall promptly report any  
 2 failures to the Department of Mines and Minerals so that appropriate action may be  
 3 undertaken pursuant to KRS 351.175.

4 Section 42. KRS 342.342 is amended to read as follows:

- 5 (1) Notwithstanding the provisions of KRS 342.340, KRS 342.350, or any  
 6 administrative regulations promulgated pursuant to those provisions, the  
 7 commissioner shall annually review the adequacy of the financial or other security  
 8 requirements contained in administrative regulations, promulgated pursuant to the  
 9 individual self-insurance provisions in this chapter. The commissioner shall report  
 10 the results of the review to the Labor and Industry Committee of the General  
 11 Assembly and any recommendations for proposed changes to insure the financial  
 12 soundness of the individual self-insurers~~[-and the self-insurance groups]~~ authorized  
 13 pursuant to this chapter. In addition, the commissioner shall report not less often  
 14 than annually a summary report on the financial soundness of the individual self-  
 15 insurers~~[-and self-insurance groups]~~.

- 16 (2) The Labor and Industry Committee of the General Assembly shall annually review  
 17 the administrative regulations promulgated pursuant to the individual~~self-~~  
 18 ~~insurance]~~ provisions under this chapter.

- 19 (3) On July 1, 1994, the Coverage and Compliance Branch of the Department of  
 20 Workers' Claims in the Labor Cabinet shall be expanded by five (5) employees.  
 21 These additional employees shall be employed for the purpose of conducting  
 22 financial audits, examinations, and reviews and other activities necessary to ensure  
 23 and monitor the financial soundness of the individual self-insured employers~~[-and~~  
 24 ~~group self-insurers]~~ authorized pursuant to KRS 342.340.

25 Section 43. KRS 342.345 is amended to read as follows:

- 26 (1) Whenever an employer has complied with the provisions of KRS 342.340 relating  
 27 to individual self-insurance, the commissioner shall issue to the employer a

1 certificate which shall remain in force for a period fixed by the commissioner. But  
 2 the commissioner may, upon at least ten (10) days' notice and a hearing to the  
 3 employer, revoke or suspend the certificate upon satisfactory evidence that  
 4 revocation or suspension is appropriate. If the commissioner revokes a certificate,  
 5 the commissioner may thereafter, upon petition of the employer and a hearing, grant  
 6 a new certificate, but the employer shall not, as a matter of right, be entitled to a  
 7 hearing for this purpose sooner than six (6) months following an order of the  
 8 commissioner revoking the employer's certificate.

9 (2) A self-insurer whose certificate to self-insure has been revoked is not relieved of its  
 10 obligations for compensation to its employees for work-related injuries or  
 11 occupational diseases that occur during the period of self-insurance. The required  
 12 security shall be maintained with the commissioner or under the commissioner's  
 13 control until each claim for workers' compensation benefits has been paid, been  
 14 settled, or lapsed under this chapter.

15 Section 44. KRS 342.347 is amended to read as follows:

16 (1) The commissioner or his designee shall have power to examine the financial  
 17 condition and affairs related to workers' compensation of any individual self-  
 18 insureds~~[or self-insured groups]~~ and shall have free access to books and documents  
 19 relating to the self-insurance activities of the entity. The commissioner shall so  
 20 examine each ***individual*** self-insured not less frequently than once every four (4)  
 21 years. Information obtained through the examination shall be exempt from  
 22 disclosure, under KRS 61.878(1)(j).

23 (2) All individual self-insured employers~~[and self-insurance groups]~~ shall file with the  
 24 commissioner a statement of financial condition audited by an independent certified  
 25 public accountant on or before one hundred twenty (120) days from the end of the  
 26 self-insured's fiscal year for the immediately preceding fiscal year.~~[For self-~~  
 27 ~~insurance groups, the financial statement shall include an actuarial opinion by a~~

1 ~~member or fellow of the Casualty Actuarial Society and a supporting reserve study~~  
 2 ~~regarding reserves for claims and expenses associated therewith. The reserve study~~  
 3 ~~shall include documentation sufficient for another actuary practicing in the same~~  
 4 ~~field to evaluate the work. The documentation shall describe clearly the sources of~~  
 5 ~~data, material assumptions, and methods used. Such documentation shall include,~~  
 6 ~~but not be limited to, the following:~~

- 7 ~~(a) Case reserves on known cases by accident period, both for losses and~~  
 8 ~~allocated loss adjustment expenses;~~
- 9 ~~(b) Estimates of claims that have been incurred but not reported by accident~~  
 10 ~~period for both losses and allocated loss adjustment expenses;~~
- 11 ~~(c) The method of discounting and the discount rate selected for case reserves and~~  
 12 ~~incurred but not reported losses; and~~
- 13 ~~(d) Estimates of ultimate losses and allocated loss adjustment expenses for the~~  
 14 ~~prospective accident period and unallocated loss adjustment reserves.]~~

15 (3) The expense of examination shall be borne by the entity examined and shall include  
 16 reasonable lodging and travel expenses of the commissioners' designees, and expert  
 17 assistance as necessarily incurred in the examination.

18 (4) The Department of Insurance shall approve the form and contents of excess  
 19 insurance policies and upon request of the commissioner shall review the  
 20 application for approval of any ***individual*** self-insured and render an opinion as to  
 21 the sufficiency of the excess insurance policies or other security posted by the  
 22 applicant.

23 (5) Not less often than biennially the commissioner of the Department of Insurance  
 24 shall review the activities, procedures, administrative regulations, and policies of  
 25 the Department of Workers' Claims and make such recommendations to the  
 26 Governor and legislative committees as may be appropriate to strengthen the  
 27 oversight of ***individual*** self-insureds so that payment of liabilities to workers under

1 this chapter is assured.

2 Section 45. KRS 342.350 is amended to read as follows:

- 3 (1) In order to comply with KRS 342.340, groups of employers may form, either among  
4 themselves or with employers in other states, mutual insurance associations, or  
5 reciprocal or interinsurance exchanges subject to the insurance laws of this state and  
6 any reasonable conditions and restrictions not inconsistent therewith fixed by the  
7 commissioner. Membership in these mutual insurance associations or reciprocal or  
8 interinsurance exchanges so approved, together with evidence of the payment of  
9 premiums due, shall be evidence of compliance with KRS 342.340.
- 10 (2) The commissioner may, except as provided in subsection (3), require any mutual  
11 insurance association or reciprocal or interinsurance exchange to purchase an  
12 annuity or to effect reinsurance with a company authorized to transact insurance in  
13 this state or to make a deposit with a bank or trust company of this state that shall in  
14 either case be approved by the commissioner for the purpose of fully securing the  
15 payment of all deferred installments upon any claim for compensation.
- 16 (3) Any mutual insurance association or reciprocal or interinsurance exchange  
17 possessing a surplus of at least one hundred thousand dollars (\$100,000) and not  
18 less in amount than the capital required of a domestic stock insurance company  
19 transacting the same kind of insurance shall not be required to purchase an annuity  
20 or effect reinsurance with a company authorized to transact insurance in this state or  
21 to make a deposit with a bank or trust company of this state for the purpose of fully  
22 securing the payment of all deferred installments upon any claim for compensation.
- 23 (4) In addition,~~[the commissioner,]~~ under **the provisions of Section 2 of this Act and**  
24 **administrative regulations promulgated by the commissioner of the Department of**  
25 **Insurance, twenty (20)**~~[that he shall prescribe, may permit eleven (11)]~~ or more  
26 employers **with common interests or membership in a bona fide trade association**  
27 or two (2) or more city, county, **charter county**~~[municipal, or]~~ urban-county, **or**



1 consolidated local government employers or their agencies ~~may~~<sup>[to]</sup> enter into  
 2 agreements to pool their liabilities under this chapter for the purpose of qualifying  
 3 as self-insured groups~~[self-insurers. Employers securing certification as group self-~~  
 4 ~~insurers are regulated by the administrative regulations drawn by the commissioner~~  
 5 ~~and are not to be in any way subject to the provisions of subsections (1), (2), and (3)~~  
 6 ~~of this section; however, the Governor may assign the regulatory authority under~~  
 7 ~~this subsection to another board or agency pursuant to KRS 12.028].~~

8 Section 46. KRS 342.900 is amended to read as follows:

- 9 (1) The General Assembly hereby finds and declares that the establishment of self-  
 10 insurance guaranty funds is a necessary component of a complete system of  
 11 workers' compensation, to make provisions for the general welfare of workers and  
 12 their dependents, to relieve the consequences of any industrial injury or death, and  
 13 to secure the payment of workers' compensation benefits provided by this chapter.
- 14 (2) The General Assembly further finds and declares that provision must be made for  
 15 the continuation of workers' compensation benefits otherwise delayed or terminated  
 16 due to the failure of a self-insured employer to meet obligations because of  
 17 insolvency. It is for that purpose that the General Assembly establishes mechanisms  
 18 requiring the establishment of three (3) distinct nonprofit, unincorporated guaranty  
 19 associations, one (1) of whose members shall be composed of individually self-  
 20 insured employers excluding individually self-insured coal employers and public-  
 21 sector employers; one (1) shall be composed of self-insured groups~~[group self-~~  
 22 ~~insurers]~~ created pursuant to KRS 342.350(4) and Section 2 of this Act; and one (1)  
 23 shall be composed of individually self-insured coal operators.

24 Section 47. KRS 342.902 is amended to read as follows:

25 As used in KRS 342.900 to 342.912, unless the context requires otherwise:

- 26 (1) "Insolvent self-insurer" means either an individual self-insured employer or a self-  
 27 insured group~~[self-insurer]~~ who has failed to pay compensation as a result of a

1 declaration of bankruptcy or insolvency by a court of competent jurisdiction, and  
 2 whose security deposit has been called by the commissioner, or who has failed to  
 3 provide compensation and who has been issued a certificate of default by the  
 4 commissioner and whose security deposit has been called by the commissioner.

5 (2) "Member" means a self-insured employer or self-insured~~[self insurance]~~ group that  
 6 participates in a guaranty fund created pursuant to KRS 342.900 to 342.912.

7 (3) "Guaranty fund" means one (1) of the three (3) guaranty funds established pursuant  
 8 to KRS 342.900 to 342.912.

9 (4) "Directors" means the board of directors of a guaranty fund.

10 (5) "Certificate of default" means a notice issued by the commissioner based upon a  
 11 finding that a self-insured employer or self-insured~~[self insurance]~~ group has failed  
 12 to pay compensation required by this chapter.

13 Section 48. KRS 342.906 is amended to read as follows:

14 (1) There is created a nonprofit, unincorporated legal entity to be known as the  
 15 Kentucky individual self-insurance guaranty fund to function as the guaranty fund  
 16 for individually insured employers, excluding individually self-insured coal  
 17 employers, to secure workers' compensation liabilities under this chapter and  
 18 pursuant to administrative regulations promulgated by the commissioner. Each  
 19 noncoal, individually self-insured employer who has qualified and been certified by  
 20 the commissioner as a self-insured employer on or after March 1, 1997, shall  
 21 participate as a member of the guaranty fund created pursuant to this subsection as a  
 22 condition of maintaining its certificate required to be self-insured under this chapter.  
 23 The commissioner shall revoke any self-insurer's certificate and authority to be self-  
 24 insured if the self-insured employer fails to maintain membership in the guaranty  
 25 fund or fails to pay assessments levied by the guaranty fund created pursuant to this  
 26 subsection.

27 (2) There is created a nonprofit, unincorporated legal entity known as the Kentucky

1 group self-insurance fund to function as a guaranty fund for self-insured~~[self-~~  
 2 ~~insurance]~~ groups or associations established under KRS 342.350(4) and Section 2  
 3 of this Act, to secure workers' compensation liabilities under this chapter and  
 4 pursuant to administrative regulations promulgated by the commissioner of the  
 5 Department of Insurance. Each self-insured~~[self-insurance]~~ group or association  
 6 that is authorized to self-insure and certified by the commissioner of the  
 7 Department of Insurance to self-insure on or after March 1, 1997, shall participate  
 8 as a member of the guaranty fund created pursuant to the provisions of this  
 9 subsection, as a condition of maintaining its authorization and certificate to self-  
 10 insure. The commissioner of the Department of Insurance shall revoke any  
 11 authorization and certificate to self-insure of any self-insured~~[self-insurance]~~ group  
 12 or association for failure to maintain membership in the guaranty fund or failure to  
 13 pay assessments levied by the guaranty fund created pursuant to the provisions of  
 14 this subsection.

15 (3) There is created a nonprofit, unincorporated legal entity known as the Kentucky  
 16 coal employers self-insurance fund to function as a guaranty fund for individually  
 17 self-insured coal employers to secure workers' compensation liabilities under this  
 18 chapter and pursuant to administrative regulations promulgated by the  
 19 commissioner. Each coal employer that is individually self-insured and that has  
 20 been authorized and certified to self-insure on or after March 1, 1997, shall  
 21 participate as a member of the guaranty fund created pursuant to the provisions of  
 22 this subsection as a condition of maintaining authorization and certification to self-  
 23 insure. The commissioner shall revoke a coal employer's authority and certification  
 24 to self-insure for failure to maintain membership in the guaranty fund or to pay  
 25 assessments levied by the guaranty fund created pursuant to the provisions of this  
 26 subsection.

27 (4) The guaranty funds created pursuant to this section are created for the purposes of

1 meeting the obligations of insolvent individually self-insured employers or  
 2 members of a self-insured~~[self insurance]~~ group or association incurred while  
 3 members of a guaranty fund and after exhaustion of all security, including bonds,  
 4 escrow deposits, insurance, or reinsurance, required by this chapter or Sections 9  
 5 and 10 of this Act. The method of operation of each guaranty fund created pursuant  
 6 to the provisions of this section shall be established by a plan of operation pursuant  
 7 to administrative regulations promulgated by the commissioner.

8 (5) The Kentucky individual self-insurance guaranty fund and the Kentucky coal  
 9 employers self-insurance guaranty fund shall each be governed by a nine (9)  
 10 member board of directors who shall serve staggered terms not to exceed four (4)  
 11 years, be representative of individual self-insurers, and be elected by the members  
 12 of the guaranty fund. Each member of the board shall have one (1) vote. In addition  
 13 to the nine (9) directors elected by the members, the commissioner of the  
 14 Department of Workers' Claims and the commissioner of the Department of  
 15 Insurance, or their designees, shall be ex officio nonvoting members of the board of  
 16 directors. A member of the board of directors may designate another member to act  
 17 in the member's place as though the member were acting, and the designee's actions  
 18 shall be deemed those of the member.

19 (6) The Kentucky group self-insurance guaranty fund shall be governed by a board of  
 20 directors composed of one (1) representative of each self-insured~~[self insurance]~~  
 21 group or association. In addition, the commissioner of the Department of Workers'  
 22 Claims and the commissioner of the Department of Insurance, or their designees,  
 23 shall be ex officio nonvoting members of the board of directors. A director may  
 24 designate another member to act in the member's place, and the designee's actions  
 25 shall be deemed those of the director.

26 (7) Each guaranty fund created pursuant to this section shall establish bylaws and a plan  
 27 of operation subject to prior approval of the commissioner, necessary to the

1 purposes of this chapter and to carry out the responsibilities of each guaranty fund.  
2 Each guaranty fund may carry out its responsibilities directly or by contract and may  
3 purchase services and insurance and borrow funds as it deems necessary for the  
4 protection of the members and their employees.

5 (8) Security called by the commissioner and disbursed to the guaranty funds, and  
6 assessments made upon members, shall vest in the guaranty funds, shall not  
7 thereafter be deemed state property, and shall not be subject to appropriation by the  
8 General Assembly or any other state agency.

9 (9) All moneys in the individual guaranty funds, exclusive of costs reasonably  
10 necessary to conduct business, shall be used solely to compensate persons entitled  
11 to receive workers' compensation benefits from a Kentucky member who has  
12 defaulted in performance of its workers' compensation benefit payment obligations  
13 under this chapter.

14 (10) No liability shall lie, whether at law or in equity, against any director, agent, or  
15 employee of a guaranty fund created pursuant to this section, on account of any  
16 action or inaction taken by any of them in the administration of a guaranty fund.

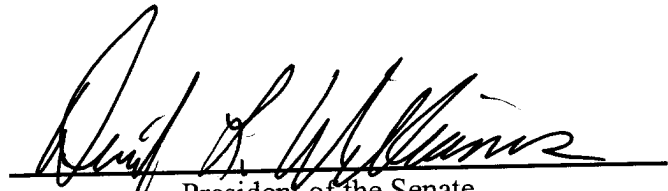
17 Section 49. In order to reflect the reorganization effectuated by this Act, the reviser  
18 of statutes shall replace references in the Kentucky Revised Statutes to the agencies,  
19 subagencies, and officers affected by this Act with references to the appropriate successor  
20 agencies, subagencies, and officers established by this Act. The reviser of statutes shall  
21 base these actions of the functions assigned to the new entities by this Act and may  
22 consult with officers of the affected agencies, or their designees, to receive suggestions.

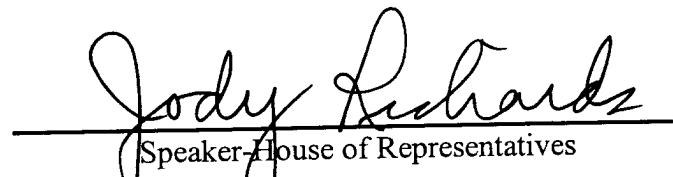
23 Section 50. Any provision of law to the contrary notwithstanding, the General  
24 Assembly hereby confirms the Governor's Executive Order 2004-835, dated August 3,  
25 2004, relating to the Environmental and Public Protection Cabinet, to the extent it is not  
26 otherwise confirmed or superseded by this Act.

27 Section 51. The amendments made to KRS 304.33-020 in Section 33 of this Act

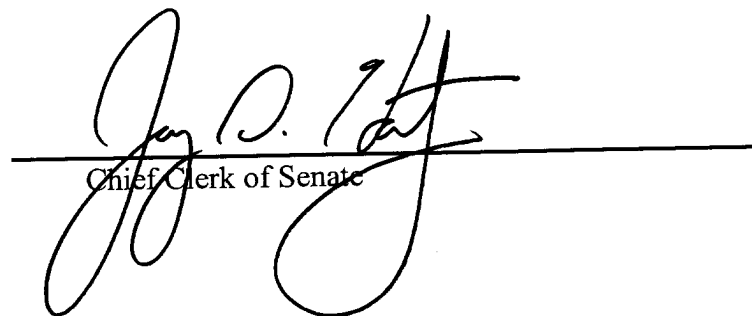
1 shall apply to proceedings initiated on or after August 1, 2004.

2       Section 52. Whereas there is an urgent need to have stronger oversight of the  
3 workers' compensation group market, an emergency is declared to exist, this Act takes  
4 effect upon its passage and approval by the Governor or upon its otherwise becoming  
5 law.

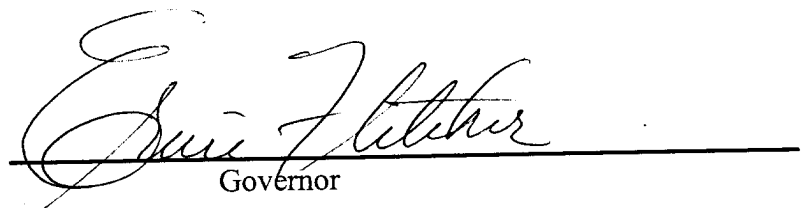
  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker House of Representatives

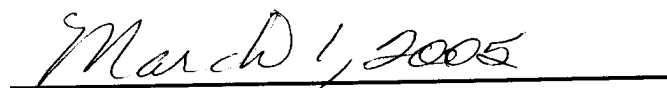
Attest:

  
\_\_\_\_\_  
Chief Clerk of Senate

Approved

  
\_\_\_\_\_  
Governor

Date

  
\_\_\_\_\_